SUPREME COURT OF THE UNITED STATES.

No. 293.

MADELEINE HENRIETTE GIRARD, MARGUERITE P. LARDY, ANNE STEPHANIE DE LENTILHAC, AND ALFRED DE LENTILHAC, HER HUSBAND, FABRICIUS DEVARS DUMAINE, A MINOR, AND MARGUERITE PALMIRE, A MINOR, BY THEIR NEXT FRIEND, JOHN DEVARS DUMAINE, ALL ALIENS AND SUBJECTS OF THE EMPEROR OF THE FRENCH, APPELLANTS,

vs.

THE CITY OF PHILADELPHIA, A MUNICIPAL CORPORATION, HOLDING ITS FRANCHISES FROM THE STATE OF PENNSYLVANIA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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1 *Docket entries.*

October sessions, 1860.—C. Ingersoll.

MADELEINE HENRIETTE GIRARD, MARGUERITE P. Lardy, Anne Stephanie de Lentilhac, and Alfred de Lentilhac, her husband, Fabricius Devars Dumaine, a minor, and Marguerite Palmire, a minor by their next friend John Devars Dumaine, all aliens and subjects of the Emperor of the French,

vs.

THE CITY OF PHILADELPHIA, a municipal corporation holding its franchises from the State of Pennsylvania.

8. In equity.

(Lex and Olmsted.)

1860, November 5. Bill filed and subpœna exit ret'ble first Monday of December next.

1860, December 1. Charles E. Lex, esquire, appears for defendants.

1860, December 3. Subpœna ret'd served.

1861, January 26. Answer of defendant's filed.

1861, February 13. Agreement of counsel that the evidence taken and reported by the examiner in the case of the bill filed to October sessions 1859, No. 3, be regarded and used as if taken in this case filed. Report of examiner substituted and filed in this case as per agreement.

1861, February 13. Replication filed.

1861, October 7. Opinion of the court filed.

1861, October 7. And now, October 7, 1861, this cause came on for hearing upon bill, answer, replication, depositions, and exhibits, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the complainants' bill be dismissed with costs.

1866, July 13. And now, to wit, this 13 July, 1866, the complainants, by their counsel, Charles Ingersoll, esq., pray the court
2 for leave to enter an appeal from the decree of the court dismissing the complainants' bill.

1866, July 17. Appeal allowed and citation issued.

1866, July 25. Bonds on appeal taken.

1866, July 27. Citation returned, service accepted.

1866, Oct. 4. Barne's new map of the consolidated city of Philadelphia, published in 1855, which, at page tenth of the examiner's report, the examiner reports was agreed by counsel to be used in evidence, filed.

UNITED STATES, *Eastern District of Pennsylvania, sct.:*

I certify the foregoing to be a true and faithful transcript from the docket entries in the above case.

Witness my hand and seal of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, at Philadelphia, this fourth day of October, 1866, and in the ninety-first year of the independence of the said United States.

BENJ'N PATTON,
Clerk C. C. U. S.

Pleas and proceedings before the honorable the judges of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit of October sessions, 1860, No. 8, it is thus contained:

2½ Be it remembered, that heretofore, to wit, on the fifth day of November, A. D. one thousand eight hundred and sixty, Madeleine Henriette Girard, Marguerite P. Lardy, Anne Stephani de Lentilhac, and Alfred de Lentilhac, her husband, Fabricus Devars Dumaine, a minor, and Marguerite Palmire, a minor by their next friend John Devars Dumaine, all aliens and subjects of the Emperor of the French, by their solicitor, Charles Ingersoll, esquire, filed of record in the said court their bill of complaint against the city of Philadelphia, a municipal corporation holding its franchises from the State of Pennsylvania, in the words and tenor following, to wit:

3 To the judges of the circuit court of the U. S. for the eastern district of Pennsylvania:

Madeleine Henriette Girard, Marguerite P. Lardy, Anne Stephanie de Lentilhac, and Alfred de Lentilhac, her husband, Fabricius Devars Dumaine, a minor, and Marguerite Palmire Dumaine, a minor by their next friend John Devars Dumaine, all aliens, subjects of the Emperor of the French, bring this their bill against the city of Philadelphia, a municipal corporation, holding its franchises from the State of Pennsylvania. And thereupon the said plaintiffs complain and say, that in the month of December, 1831, Stephen Girard, a native of France and citizen of the State of Pennsylvania, resident in the city of Philadelphia, there died, seized and possessed of estates, personal and real, unmarried, without issue, and leaving neither father nor mother, but leaving a brother Etienne Girard and the heirs and representatives of another brother John Girard, then deceased, and the heirs and representatives of a sister, Sophia Girard, also then deceased. That of the said Etienne Girard, who died in the year 1837, the children living at the time of his death were Marguerite Chloe Girard, who has since died intestate, without issue and unmarried, John Fabricius Girard, Marguerite P. Girard, one of these plaintiffs, who married Louis Lardy, who is now deceased, Anne Henriette Girard, now deceased, who married John Devars Dumaine, also now deceased, and had issue by him, Fabricius Devars Dumaine, a minor under the age of twenty-one years, one of these plaintiffs, and

Marguerite Palmire Dumaine, also a minor under the age of twenty-one years, one of these plaintiffs, John Augustus Girard, Madeleine Henriette Girard, one of these plaintiffs, Marie Girard, afterwards married to Louis de Roux, and Anne Stephanie Girard, one of these plaintiffs, afterwards married to Alfred de Lentilhac, one of these plaintiffs.

That the value of the estate, real and personal, of M. Girard was estimated at and about the time of his death to be, and actually was, several millions of dollars; but that at this day, owing to the enhancement of value of parts of the realty, namely, certain portions of it in the city of Philadelphia, and all of that portion of it, namely, about 30,000 acres, which contains mines of anthracite coal, and lies in the counties of Schuylkill and Columbia, the present value of the entire estate is supposed to be, and is by the plaintiffs averred to be, and stated at upwards of thirty millions of dollars, which value is from year to year constantly increasing.

That by the last will and testament of the said Stephen Girard, which was proved at Philadelphia the 31st of December, 1831, the testator, after bequeathing various legacies to individuals and bodies corporate, and providing for the building and endowment of a college for the maintenance and education of certain poor white male orphan children, devised to the municipal corporation known and then existing as the mayor, aldermen, and citizens of Philadelphia, the ultimate residue of his estate, real and personal, to improve their police, to improve the city property and the general appearance of the city itself, and to diminish the burden of taxation; which corporation thus constituted the ultimate residuary devisee of the said testator, then comprised within its limits the territory and population of a portion of one of the counties of the State, namely, that of Philadelphia, which included within its boundaries also many other municipal corporations, each having separate and distinct corporate existence. And the plaintiffs show that by the proceedings of the corporators of the said city, under and by virtue of an act of the general assembly of the Commonwealth of Pennsylvania, usually called the consolidation act, those different municipal bodies were cast into one, to which was given the name of the city of Philadelphia. And the
4 plaintiffs are advised that by the operation and effect of the said act of assembly, and of the proceedings thereunder, as hereinafter fully explained, the said municipal corporation, the mayor, aldermen, and citizens of Philadelphia, the devisees of the said Stephen Girard, being extinct, and these defendants, the present city of Philadelphia, not being capable under his will to hold the said estates so devised to the late city, to the said uses of the improvement of the police, the improvement of the property, and to diminish the burden of taxation of the said late city, nor to comply with and perform the said municipal uses and conditions, nor to apply thereunto, according to the will of the testator, the surplus thereof beyond the wants of the said college; the said surplus goes to the heirs-at-law, and they, the said plaintiffs, as certain of the heirs-at-law of the said Stephen Girard, became and now are entitled

to their rateable portion in the said estates of the testator, which were so as aforesaid, after the payment of legacies, and providing for the said college for orphans, bequeathed for the said uses to the said mayor, aldermen, and citizens of Philadelphia. That the title of the heirs-at-law of the testator is at this time what that of the said Girard himself would be to the said ultimate residue of the said estates had he made a gift or grant of them during his life, instead of a bequest to take effect after his death, and had the said mayor, aldermen, and citizens of Philadelphia, his grantees, been consolidated as aforesaid with the county in the lifetime of the said Girard.

And the plaintiffs are advised that their claim is not embarrassed by the question, if such be made, whether in point of law the late corporation, the mayor, aldermen, and citizens of Philadelphia, has been dissolved and ceased to have cognizable legal existence, or, on the contrary, has such existence, and has been enlarged and extended and not dissolved; if it be true, as in fact it is, that the effect of the act and the proceedings thereunder is to prevent the performance of the uses and conditions of the will, and to divert the bounty of the testator from the channel he appointed for it, into one which by the language and meaning of the will is contrary to his purposes. That if such be their effect, the defendants, though they may have artificial legal identity with the municipality called the mayor, aldermen, and citizens of Philadelphia, are not the devisees of the testator, nor capable to hold the ultimate residue of the estates, so as aforesaid bequeathed, and to perform its uses and conditions; but the same goes to the heirs-at-law.

And the said plaintiffs proceed first to lay before the court a summary of the will of the testator and such portions of its contents, either word for word or by substantial statement, as may be necessary to be referred to; a full and complete copy of it in all its parts being hereto annexed, marked A, which they pray may be taken as part of this their bill. It is divided by their testator into twenty-six clauses, so styled by him, and added thereto are two codicils.

And the plaintiffs show that by the first eighteen clauses he bequeaths various pecuniary legacies, and a house at Bordeaux, to different individuals, his relatives, friends, servants, and certain bodies corporate; the value of the said bequests, some of which were in the form of annuities, not being capable of exact ascertainment by the plaintiffs, but seeming to be of an amount of several hundred thousands of dollars. That by the nineteenth clause he bequeaths certain property held by him near Ouachita, in Louisiana, consisting of a plantation and slaves, and a body of upwards of two hundred and eight thousand acres of land, "to the corporation of the city of New Orleans," and to the mayor, aldermen, and citizens of Philadelphia, in designated proportions, subject to an interest for a term of twenty years in the plantation and slaves, should he so long live, to Mr. Henry Bree, whom the testator designates as his "particular friend." That the city of New Orleans is directed to apply the proceeds of their portion of the bequest, after having sold their interest in the lands, "to such uses and purposes as the said corporation may con-

sider most likely to promote the health and prosperity of the inhabitants of the city of New Orleans;" and the mayor, aldermen, and citizens of Philadelphia to apply their portion of the proceeds of the same, after having sold their interest in the lands, "to the same uses and purposes declared and directed of and concerning the residue of my personal estate." That by the twenty-second clause he devises the sum of five hundred thousand dollars, which he calls "part of the residue of my personal estate," to be invested, and the income applied to three objects, the first being to lay out and regulate a street or passage on the eastern front of the city, "to be called Delaware avenue, extending from Vine to Cedar street," and "to completely clean and keep clean all the docks within the city." The second, "to pull down and remove all wooden buildings" "within the limits of the city of Philadelphia, and also to prohibit the erection of any such buildings within the said city's limits at any future time." The third, "to regulate, widen, pave, and curb Water street, and to distribute the Schuylkill water therein."

That by the twenty third clause is bequeathed the sum of three hundred thousand dollars to the commonwealth of Pennsylvania, "for the purpose of internal improvements by canal navigation," on condition of their enacting the laws necessary to enable the city to carry out the various improvements provided for in section twenty-second. That by the twenty-fifth direction is given to his executors not to interfere with a certain trust established for winding up the affairs of his banking-house. That by the twenty-sixth are appointed the executors of the will. That by the first codicil the will is republished, and by the second it is again republished, and provision made for changing the site of the said college for orphans from a lot on Chestnut and Market streets, where it was originally directed to be placed, to a piece of ground in the township of Penn, then recently, and subsequently to the execution of his will, purchased by the testator. That by the twentieth clause the testator devises the residue and remainder of his real and personal estate to the mayor, aldermen, and citizens of Philadelphia, in trust for the uses, intents, and purposes to be declared by him, and directs that the residue of the realty be applied to the same uses declared for the residue of the personalty. And accordingly in those parts of the will which are subsequent to the twentieth clause, the whole residue, real and personal, is denominated by the testator personalty. That by the twenty-first clause he appropriates, of his residuary estate, two millions of dollars, or "so much thereof as may be necessary," to building and fitting a college for orphans, for the construction, organization, and government of which he gives directions; "the income, issues, and profits of so much of the said sum of two millions of dollars as shall remain unexpended," in building and fitting the college, to "be applied to maintain the said college according to the testator's directions." And that in the concluding portion of the clause he provides for the contrary case, namely, that of the two millions being found inadequate, after having built and fitted the college, to main-

tain it: "If the income arising from that part of the said sum of two millions of dollars remaining after the construction and furnishing of the college and out-buildings shall, owing to the increase of the number of orphans applying for admission, or other cause, be inadequate to the construction of new buildings, or the maintenance and education of as many orphans as may apply for admission, then such further sum as may be necessary for the construction of new buildings and the maintenance and education of such further number of orphans as can be maintained and instructed within such buildings as the said square of ground shall be adequate to, shall be taken from the final residuary fund, hereinafter expressly referred to, for the purpose, comprehending the income of my real estate in the city and county of Philadelphia and the dividends of my stock in the Schuylkill Navigation Company—my design and desire being that the benefits of said institution shall be extended to as great a number of orphans as the limits of the said square and buildings therein can accommodate."

That by the twenty-fourth clause the testator devises, "as it regards the remainder of said residue of my personal estate," which expression, personal estate, comprises, as aforementioned, both realty and personalty, "in trust, to invest the same in good securities, and in like manner to invest the interest and income thereof, from time to time, so that the whole shall form a permanent fund, and to appropriate the income of the said fund—

"First. To the further improvement and maintenance of the aforesaid college, as directed in the last paragraph of the twenty-first clause of this my will.

"Second to enable the corporation of the city of Philadelphia to provide more effectually than they now do for the security of the inhabitants of the said city, by a competent police, including a sufficient number of watchmen, really suited to the purpose; and to this end I recommend a division of the city into watch districts, or four parts, each under a proper head.

"Third. To enable the said corporation to improve the city property, and the general appearance of the city itself, and, in effect, to diminish the burden of taxation, now most oppressive, especially on those who are the least able to bear it." "To all which objects, the prosperity of the city, and the health and comfort of its inhabitants, I devote the said fund as aforesaid, and direct the income thereof to be applied yearly, and every year forever, after providing for the college, as hereinbefore directed, as my primary object."

And the plaintiffs show that the scheme of the said will may be stated thus: That the testator, after devising specifically his real estate in Louisiana and in France, and leaving certain pecuniary legacies, gives "all the residue and remainder" of his "real and personal estate" to "the mayor, aldermen, and citizens of Philadelphia, their successors and assigns, in trust to and for the several uses, intents, and purposes," in the will, "declared of and concerning the same;" and so far as regards his "real estate in Pennsylvania, in trust, that no part thereof shall ever be sold or alienated." That he

declares those uses, intents, and purposes to be, "to apply and expend two millions of dollars, if so much should be required, to build and fit the college; to invest five hundred thousand dollars securely, and apply the income thereof in the manner prescribed, to improve, within the city limits, the wharves and Water street, and to pull down and prevent the future erection of wooden buildings; to pay three hundred thousand dollars to the State, provided they passed, in one year after the death of the testator, such laws as might be necessary "to enable the constituted authorities" of the city to carry into effect the proposed improvements of the wharves and Water street, and in the removal of wooden buildings, and preventing their future erection; and, as regards the remainder of the said residue, to apply the income thereof:

First. To the further improvement and maintenance of the college "as directed in the last paragraph of the 21st clause" of this my will.

Second. To enable the corporation to improve their police.

Third. To enable the corporation to improve the "city property and general appearance of the city itself; and, in effect, to diminish the burden of taxation."

And the plaintiffs are advised that if it be a question, whether, by the terms of the will, the testator should be understood as bequeathing to be used, if necessary, in the support and maintenance of the college, the whole "remainder of the said residue of his estate," or less than the whole of it, the solution of such question, as will be hereinafter shown, cannot effect the claim of these plaintiffs.

But they are advised that the testator bequeathed to the support and maintenance of the college, beside the said two millions of dollars, not the whole "remainder of the said residue" of his estate, but only the income of his real estate in the city and county of Philadelphia and the dividends of his stock in the Schuylkill Navigation Company. That by the ninth section of the twenty-first clause of the will, as quoted at pages 5 and 6 of this bill in full, so far as concerns the said question of the application of the residue of his estate to serve the college, the testator declares that in case of the inadequacy of the two millions of dollars to build the college and maintain it, and to construct new buildings and maintain an increased number
7 of orphans, in that event, "such further sum," "comprehending the income of my real estate in the city and county of Philadelphia and the dividends of my stock in the Schuylkill Navigation Company," "shall be taken from the final residuary fund" as may be necessary for the construction of new buildings and the maintenance and education of such further number of orphans." That is, such further sum as may be necessary, comprehending these two sources of revenue, shall be taken from the residuary fund. And the plaintiffs are advised that it is the "further sum" "necessary for the construction of new buildings and the maintenance and education of such further number of orphans as can be maintained and instructed within" them, and not the "residuary fund," which the testator measures as comprehending the income of his real estate in Philadelphia and the

dividends of his Schuylkill Navigation Company stock. That the residuary fund comprehended much more real estate of the testator than that in the city and county of Philadelphia, and many other stocks than his Schuylkill Navigation Company stock; and that neither by inadvertence nor intentionally, does he otherwise suggest; but declares and devises that, should the two millions be exhausted, a further sum from his residuary estate, limited to the income of his realty in Philadelphia and Schuylkill Navigation stock, may be taken and applied to the college. And that the testator, after so devising the said two millions of dollars, and if need be the income of his real estate in the city and county of Philadelphia and the dividends of his Schuylkill Navigation Company stock, when he proceeds by the concluding words of the said twenty-first clause to say "my design and desire being that the benefits of said institution shall be extended to as great a number of orphans as the limits of the said square and buildings therein can accommodate," did not mean, and could not have anticipated, even as a posibility, that his whole estate would be, nor is it, nor will it ever be required for supplying the wants of the college. That in endowing it with the two millions and the income of all his real estate in the city and county of Philadelphia and the dividends of his Schuylkill Navigation Company stock, he necessarily supposed that he was making, and he did in fact make, the amplest provision for the extension of "the benefits of said institution" to as "great a number of orphans as the limits of the said square and buildings therein," or as the 45 acres, the present site of the college, could "accommodate." That if in accordance with the intention of the testator and the expectations of the devisees the income only and not the capital of the said two millions of dollars, or but a moderate portion of it, had been expended on the college buildings, there would now be a large surplus income of the said two millions beyond the wants of the said college. That the income of the houses and other real estate in Philadelphia, at fair rents, is about two hundred and fifty thousand dollars ($250,000;) that the income of two millions of dollars, if the same were still in the hands of the devisees and invested according to the intention of the testator, would be about one hundred and twenty thousand dollars ($120,000;) and that the stock of the Schuylkill Navigation Company, of which there were transferred by the executors of Mr. Girard to the mayor, aldermen, and citizens of Philadelphia twenty-two hundred (2,200) shares, was by the testator regarded as property of the utmost value, and the same actually yielded dividends so considerable that the mayor, aldermen, and citizens of Philadelphia must have received, and did receive, in the dividends of one year, the sum of fifty-five thousand dollars ($55,000) upon the testator's said investment of twenty-two hundred shares. And that by means of the said provision beyond the two millions, so made for it, the said college must to the testator have seemed to be, and it actually was, and still remains, furnished with a contingent revenue ample enough to admit of the largest possible extension of the buildings and benefits of the institu-

8 tion and of the most lavish expenditure upon them.

And the said plaintiffs show that Mr. Girard, in making his devises, industriously excludes from participation in them the surrounding, and now, with the said mayor, aldermen, and citizens of Philadelphia consolidated, municipalities; which, as hereinafter shown, must needs, by reason of such consolidation, take to themselves the almost exclusive benefit of them. That in every part of the will, an unvarying discrimination is observed by the testator between the city, and the city and suburbs. That the bequests are rigidly confined to the city proper, and bestowed on it by its correct corporate designation of the mayor, aldermen, and citizens of Philadelphia; and that when, in the instance of the neighboring township of Passyunk, in which was situate Mr. Girard's farm, where he sometimes sought relaxation from the cares of business, he provides, in the eighth clause, a fund of six thousand dollars, to buy a lot of ground there, and build a school-house, and schoolmaster's house, for educating the poor children of his neighbors, he bequeathes not to the township, but to trustees of his own selection. That is only the unexpended balance of this small sum of six thousand dollars, which, after purchasing the ground, and erecting the buildings, must be little or nothing, that he authorizes those trustees to pay over to a board of directors chosen by the inhabitants of the township. That, with this single exception, if it be regarded as an exception, every portion of the territory and population of the twenty-eight municipalities, which, by the fact of their consolidation with the late city, become, as will be in the plaintiffs' bill shown, possessors of the whole ultimate residue of the testator's estate, were intended to be absolutely excluded from it. That when he leaves a legacy of ten thousand dollars, by the fourth clause of the will, to "the comptrollers of the public schools for the city and county of Philadelphia," functionaries who govern the public schools of the county, and who were and are not a city, but a county establishment or foundation, including in common with the city all parts of the county, he declares that this sum shall be for the use of those schools only that are situate within the limits of the city, and excludes those of the suburbs. That when, by the twentieth clause, five hundred thousand dollars are appropriated "to pull down and remove" wooden buildings, and "to prohibit the erection of any such buildings" "at any future time," and for the improvement of Water street and Delaware avenue, these improvements are directed by the testator to be stopped when they arrive at the limits of the city, namely, at Vine street on the north, and South street on the south.

And the said plaintiffs show that the said corporation, the mayor, aldermen, and citizens of Philadelphia, was known to the testator and had, in fact, no other existence or organization than as a municipality, whose territorial extent was limited to a front or breadth of about one mile on the river Delaware, from north to south, lying between east and west lines drawn through the centres of the said two streets, called Vine street, its northern boundary, and South street, its southern boundary, and extending in depth westward a distance of somewhat less than two miles to the river Schuylkill. And that the said

corporation, until the second of February, 1854, when, by the said act of the general assembly of the Commonwealth of Pennsylvania, entitled "A further supplement to an act entitled 'an act to incorporate the city of Philadelphia,'" and the proceedings thereunder, it was consolidated with the surrounding suburbs and other municipalities, was one of twenty-nine municipal corporations, each with a territory, population, and government of its own, and all of them lying within the boundaries of the county of Philadelphia. That the said twenty-nine bodies, so lying within the said county, and so the second of February, 1854, consolidated into one, had been incorporated at various dates, were of various territorial extent and population, differed in the details of their several organizations, and were respectively known by the following corporate names, namely: The mayor, aldermen, and citizens of Philadelphia. The commissioners and inhabitants of the district of Southwark. The inhabit-
9 ants of the incorporated district of the Northern Liberties. The commissioners and inhabitants of the Kensington district. The commissioners of the district of Spring Garden. The commissioners and inhabitants of the district of Moyamensing. The commissioners and inhabitants of the district of Penn. The commissioners and inhabitants of the district of Richmond, in the county of Philadelphia. The district of West Philadelphia. The district of Belmont. The borough of Manayunk. The borough of Germantown. The borough of Frankford. The borough of White Hall. The borough of Bridesburg. The borough of Aramingo. The township of Passyunk. The township of Kingsessing. The township of Blockley. The township of Roxborough. The township of Germantown. The township of Bristol. The township of Oxford. The township of Lower Dublin. The township of Moreland. The township of Byberry. The township of Northern Liberties. The township of Delaware. The township of Penn.

That the said twenty-nine municipalities of the said county occupied an area of upwards of one hundred and twenty-nine square miles, of which the municipality styled the mayor, aldermen, and citizens of Philadelphia occupied less than two square miles; but in point of population bore to the rest of the county a greater proportion; the fifth, sixth, 7th, eighth, ninth, and tenth wards of the present or consolidated city, which cover the ground formerly governed by the mayor, aldermen, and citizens of Philadelphia, being entitled under the consolidation act to a representation in the common council of twenty members out of eighty-five, their entire number; such representation being based upon taxable population; so that, while the territorial relation of the late city to all the other municipalities of the county was less than as two to one hundred and twenty-seven, its relation in point of number of taxable inhabitants was as twenty to eighty-five. That the old city, therefore, comprised less than a sixty-fourth part of the territory of the new one, but between a fourth and a fifth part of its population.

That of the said twenty-nine municipalities, the late city and those called districts, as the district of Kensington, the district of South-

wark, and others, were, in greater or less measure, built up and closely inhabited; those called boroughs, as the boroughs of Manayunk, Germantown, and others, were villages of the county of Philadelphia; and the townships, as Blockley, Bristol, and others, comprised its farm land. That the twenty-first, twenty-second, twenty-third, and twenty-fourth wards, and much of the nineteenth and first, which consist for the most part of farm land and villages, and the twentieth, large portions of which are not built, have a representation, based as aforesaid upon taxable population, which, reckoning all parts of the last-mentioned wards, namely, the twenty-first, twenty-second, twenty-third, twenty-fourth, nineteenth, first, and twentieth, gives twenty-five members to the common council, making five more than are allowed to those wards, namely, the fifth, sixth, seventh, eighth, ninth, and tenth, comprising the territory of the former city. That if from these twenty-five members any due number were deducted for the probable representation of the built parts of the first, nineteenth, twentieth, and twenty-fourth wards, it would be seen that the villages and farm land of the present city contain a population that bears comparison in point of taxable numbers with that of the entire territory of the late city.

And the said plaintiffs show that by the act of assembly, called the consolidation act, and the proceedings thereunder, the administration of all concerns of the said twenty-nine corporations, including their debts, taxes, property, police, and whatever else pertained to municipal office, and also the government of the county itself, were consolidated and absorbed into one. That "all the powers, rights, privileges, and immunities," as declared by the sixth section of the act, "incident to a municipal corporation, and necessary for the proper government of the same, and those of the present corporation, the mayor, aldermen, and citizens of Philadelphia," and "all the powers, rights, privileges, and immunities possessed and enjoyed by the following corporations respectively," namely, the other twenty-eight corporate bodies aforementioned, which the said act enumerates, each by its name and style, which with the old city made up the county of Philadelphia; and also "the board of police of the police district, the commissioners of the county of Philadelphia, the treasurer and auditor thereof, the county board, the commissioners of the sinking fund, and the supervisors of the township," were, by virtue of the process of consolidation, vested in "the city of Philadelphia, as established by this act." That by the thirty-seventh section, the "right, title, and interest" of the "several municipal corporations mentioned in this act of, in, and to all the lands, tenements, and hereditaments, goods, chattels, moneys, effects, and of, in, and to all other property and estate whatsoever and wheresoever, belonging to any or either of them," are "vested in the city of Philadelphia," and all "estates and incomes held in trust by the county, present city, and each of the townships, districts, and other municipal corporations, united by this act," are "vested in the city of Philadelphia, upon and for the same uses, trusts, limitations, charities, and conditions, as the same are now held by the said corporations respectively."

That by the thirty-eighth section, the "net debt of the county of Philadelphia, and the several net debts of the guardians for the relief and employment of the poor of the city of Philadelphia," and of the board of health, "and of the controllers of the public schools," and of such, namely, eighteen which are enumerated, of the said twenty-nine municipalities, as had contracted debts, were consolidated and formed into one debt, to be called "the debt of the city of Philadelphia, in lieu of the present separate debts so consolidated."

And the plaintiffs show, that by the terms of the act, and the proceedings thereunder, all the municipal powers, privileges, possessions, and burdens of the said twenty-nine municipalities were so as aforesaid transferred to the new city; and that whether the twenty-nine corporations are to be regarded as dissolved, and a new corporation erected, or one of the twenty-nine, namely, the mayor, aldermen, and citizens of Philadelphia, is to be regarded as having so extended its limits as to include within them the other twenty-eight, the plaintiffs are advised, is a consideration immaterial to this, their bill. And they show, that in fact the said consolidation, to its final intent and purpose, was carried into full effect; that it was, by the sixth section of said act of the 2d February, 1854, provided that the corporators of the new city, having elected a mayor and members of a select and common council, the said select and common council should direct the said mayor to appoint a day, not exceeding sixty days after the first Tuesday in July, 1854, when "all the powers, rights, privileges, and immunities possessed and enjoyed" by the various corporations, namely, the districts, boroughs, and townships herein above named, and those also of the said city should "cease and terminate;" and that the said select and common councils did accordingly, by resolution passed the 22d June, 1854, direct the said mayor to "issue his proclamation forthwith dissolving the different corporations superseded by the sixth section of the act consolidating the city of Philadelphia, to take effect on the 30th instant;" and, that in obedience thereto, the said mayor, two days after, by public proclamation, dated the 24th June, 1854, proclaimed that "all the powers, rights, privileges, and immunities possessed and enjoyed" by the now late city and the now late districts, boroughs, and townships, being the above enumerated twenty-nine municipalities of the county of Philadelphia, from the said 30th day of June, 1854, should "cease and terminate." And the plaintiffs show that from and after the said 30th June, 1854, the said consolidation was complete.

And the plaintiffs show that the said late city of Philadelphia was originally laid out by the proper authorities of the Province of Pennsylvania, in the year 1683; its boundaries established on the east and west being, as aforementioned, the river Delaware on the east, and the river Schuylkill on the west; and its boundaries, on the north and south, as aforementioned, the centres of the said two streets called Vine street and South street; the centre of the said street called Vine street on the north, and the centre of the said street called South street on the south. That the plot or plan of
11 the said city, prepared and made by the surveyor general of

the province, was duly lodged and now remains in the office of the surveyor general of the State, where it is registered as and for a muniment of the said city, and of the extent and boundaries of the same, and as such is recognized in all courts of justice, and there and elsewhere is known and admitted to be the original and authentic plot of the said city, its boundaries and limits, and of the sites of the different streets and all local objects and existences pertaining thereto. That upon the "inhabitants and settlers" of the city so, in the year 1683, laid out, was afterwards bestowed by the proprietary government of the province, the first charter of the said place, by the name of "the mayor and commonalty of the city of Philadelphia," and which dated the 25th of October, 1701. That by the terms of the said charter the boundaries of the city were declared to be "the limits or bounds as it is laid out between Delaware and Schuylkill," namely, the limits and bounds as set forth in the said original survey and plot so deposited in the office of the surveyor general. That the said charter was, after the Revolution, superseded by another, which, under an act of the general assembly of the State, dated the 11th March, 1789, was bestowed by the Commonwealth of Pennsylvania on the citizens of the place so in 1863 laid out and in 1701 chartered. That by the terms of the said act of 1789 the boundaries of the city were declared to be "as the same extends and is laid out between the rivers Delaware and Schuylkill," namely, the boundaries as laid in the said survey and plot in the office of the surveyor general. And the plaintiffs aver, that from the year 1683 to the 30th June, 1854, the said boundaries remained unchanged.

And the plaintiffs to the court here show the said survey and plot of the said city, and the said charter thereof, dated the 25th October, 1701, and the said act of incorporation, passed the 11th March, 1789, and the said act of consolidation, passed the 2d February, 1854, and the said proceedings thereunder to give the same effect; and moreover, the various enactments of the Commonwealth of Pennsylvania, by which were severally incorporated the said twenty-nine municipalities, and the supplements to those enactments, from time to time passed by the general assembly, all which the plaintiffs pray may be considered as part of this their bill; and also the various notorious topographical and physical facts, proper and necessary to be before the court, regarding the said twenty-nine municipalities of the county of Philadelphia, now occupied up to its limits under the said act of 1854 by the present city, which facts they are advised will be judicially noticed, without being at large introduced into this bill.

And the plaintiffs having shown to the court what were the last will and testament of Mr. Girard, and the devises therein contained, and the act of assembly of the 2d February, 1854, commonly called the consolidation act, and its provisions, and the proceedings thereunder, now proceed to show that the said will of the testator has been set at naught; and the legal consequences thereof. And they are advised that if not technically dissolved, the municipality devised to being now a body not known to the testator, composed of elements foreign to his devises, and not capable of carrying them out, is, as

aforesaid, in its new character, no longer the devisee of Mr. Girard; and the devise in fact is lapsed; and that while it may be in the power of the legislature, in order to continuity of corporate existence, to ordain that the name only be deemed changed when actually the corporation is transformed, it is not in their power, nor is it to be supposed to have been, nor was it their design, to reconstruct this testator's will, or divert its legacies to objects not within his purposes.

And they are advised that all uses, even those of a public and general character, and to charitable ends and objects declared by a testator, must be substantially fulfilled by his devisees; and the law is not satisfied by their coming as near them as they can; such a rule of construction not being in force in Pennsylvania, and never having been in force anywhere, if it were by the act of the divisees themselves that fulfilment of the terms of the devise became im-
12 possible. That no latitude is allowed to defect of compliance, which is the voluntary act of the devisee, or a consequence of it, remote or immediate. That if a devisee by his own act could open the way to substitute qualified for substantial fulfilment of testamentary conditions, no devise would go into effect, and the devisee's own inclinations would take the place of the will of the devisor.

And the plaintiffs show that if it has become, since the 30th of June, 1854, impossible to carry out the will of Mr. Girard, the impediment arises out of the voluntary acts and proceedings of his devisees, and the provisions of a new charter duly accepted by them; and that, in fact, the procurement, as well as the acceptance of the said charter, was the act, and spontaneous act, of the citizens of the late city; that the vote of the representative being in representative government, the vote of the constituent, and the recognized exponent of his will, and the votes of the representatives of the late city in the general assembly of the State having been cast unanimously for the erection of the said new municipality, and their most strenuous efforts directed in its favor, the said charter is to be regarded as not merely accepted in a full, lawful, and binding manner, but as having been, as the plaintiffs aver it really was, solicited as a boon by the corporators, and as such obtained by them from the authorities of the State.

And the plaintiffs show that the entire scheme of consolidation of the city with the surrounding municipalities, in all its details, as seen in the said charter and act of the 2d February, 1854, as well as the said acceptance thereof, and the said proceedings thereunder, was the work of the citizens of the said city; that influential persons, having originated and brought it forward, assembled them in public meetings, at which the project of the new charter was regarded in all its bearings, and among the rest, that of its effect on their title to the Girard estates; and scrutinized and minutely examined at their said meetings by the said corporators, and by their committees and sub-committees for that purpose appointed, who reported to adjourned meetings plans of consolidation, which, after being weighed and ap-

proved by the citizens of the city, were finally laid by them before the legislature of the State, accompanied by petitions earnestly praying their immediate adoption, and the enactment of the said act of the 2d February, 1854; that the public sentiment of the municipality being ascertained, fixed, and expressed, representatives of the city, pledged to the measure of consolidation, were, by committees appointed for the purpose, selected from among its citizens, and being elected, took their seats as members of the general assembly of 1854, instructed to procure its enactment into a law; that the chartered authorities of the city, the select and common councils, the measure being laid before them for their approval by the citizens of the city prior to the meeting of the general assembly, deliberated upon and approved it, and concluded to facilitate and did facilitate its becoming a law, and the city members of the general assembly accordingly were requested by them to procure the consolidation of the city with the said surrounding municipalities; that the legislature of Pennsylvania having met in the year 1854, the 3d of January, the next day, the 4th of January, the subject was introduced into the senate, and, on the 6th of that month, into the house, after, in compliance with the pressure of the city upon the authorities of the Commonwealth, especial notice had been called to it by the governor in his annual message to the two houses, that on the 2d of February, 1854, thirty days after the session had been opened, the consolidation bill, comprising fifty-three sections, drafted and prepared in the city of Philadelphia by a committee there raised for the purpose by the
13 corporators at their said meetings, and on which sat some of its most prominent citizens, passed both houses, was signed by the executive, and became a law; that in the house of representatives it received, on a call of the yeas and nays, the four votes of the city of Philadelphia, and ten of the eleven votes present from the county, there being in the whole house three votes only given against and seventy-nine in favor of the bill; that in the senate it received, on a call also of the yeas and nays, all the votes of the senators of both city and county, namely, the two who represented the city, and three who represented the county, and that of the twenty-seven senators present, not one voted against it; that this almost unanimous vote of both houses of the legislature was attributable to the united efforts of the corporators of the city of Philadelphia, and those of the twenty-eight municipalities of the county, and the measures so aforesaid taken by them to have their charters consolidated in the manner provided in the said bill, and such was their zeal to accomplish their object at a juncture when, as aforementioned, the opinions of the city authorities coincided on this measure with those of the corporators, that the committee of citizens, so as aforesaid raised for the purpose, were not allowed due time for bestowing the requisite attention on the details of the bill, and frequent alterations of the law since its original enactment thereby have become necessary; that the governor, having signed the bill as drafted by the corporators, a law, during the same legislative session of 1854, was demanded and passed, entitled "an act to construe the act" of the 2d of February

preceding; that an act, consisting of thirty sections, entitled "a supplement to the act consolidating the city of Philadelphia," was passed at the session of 1855; an act, consisting of thirty-one sections, entitled "a further supplement to the act consolidating the city of Philadelphia," during the session of 1856; five supplements during the session of 1857, namely, one the 28th of April, one the 7th of May, one the 13th of May, and two the 16th of May; at the session of 1858 six supplements more, namely, one the 15th of March, one the 30th of March, one the 16th of April, one the 20th of April, one the 21st of April, and one the 22d of April; and at the session of 1859 four supplements, namely, one the 30th March, one the 9th April, one the 11th April, and one the 13th April.

And the plaintiffs are advised that if the devisees be not indeed corporately extinct, but if, by reason of a new municipal position assumed by them under a new charter, they are disabled to comply with the conditions and fulfil the uses provided for in the will, not only is it, as aforesaid, not the legal effect thereof that they may retain possession of the devised estates, complying as nearly as they can; but that, on the contrary, having sought and obtained the said charter, and accepted for themselves the said position, incompatible with their performance of the said conditions and uses, preferring the advantages arising from their new charter to those pertaining to the possession of the estates so devised them, the said devisees have, to legal intendment, thereby disclaimed the said devise; that, as the plaintiffs are advised, their accepting a charter under which they are not able to perform the conditions and uses of the devise is as if they had originally refused to take it.

And the plaintiffs show that, by the section of the consolidation act by them above referred to, numbered thirty-seven, in the words of the said section, "all the right, title, and interest" of the various "municipal corporations mentioned in this act of, in, and to all the lands, tenements, hereditaments, bridges, ferries, railroads, wharves, markets, stalls, landings, landing-places, water-works, gas-works, buildings, easements, and franchises of, in, and to all goods, chattels, moneys, effects, debts, dues, demands, amercements, fees, perquisites, rights, incomes, bonds, obligations, judgments, liens, actions, and rights of action, books, accounts, and vouchers, and of, in, and to all other property and estate whatsoever and wheresoever belonging to any or either of them," were "vested in the city of Philadelphia," namely, these defendants; and that "all the estates and incomes" "held in trust by the county," "city, and each of the townships, districts, and other municipal corporations united by this
14 act," were declared to be "held by the city of Philadelphia," namely, these defendants, "upon and for the same uses, trusts, limitations, charities, and conditions, as the same" had been "held by the said corporations respectively." And the plaintiffs show, that by the said words of the thirty-seventh section of the act, together with those of the first section, also above referred to, "that the corporate name of the mayor, aldermen, and citizens of Philadelphia shall be changed to the city of Philadelphia, and the boundaries of

the said city shall be extended, so as to embrace the whole territory of the county of Philadelphia; and all the powers of the said corporation, as enlarged and modified by this act, shall be exercised and have effect within the said county, and over the inhabitants thereof;" the right of these defendants, if any there be, accrues; the property held by the late city in ownership, the property held by them in trust, and their municipal functions, being therein all of them transferred, or attempted to be transferred, to the new city. And they are advised that no larger nor more comprehensive grant could be devised or enacted than one which includes all municipal powers and all property, whether held in trust or ownership.

And being advised, as aforestated, that it is immaterial to these plaintiffs whether the corporation called the mayor, aldermen, and citizens of Philadelphia, the devisee of Mr. Girard, was or was not actually, by the said act of the general assembly, dissolved, which, however, they are advised it was; but submitting that, in any event, the only party that, since the consolidation act, can pretend to hold the said estates as against the plaintiffs, is these defendants, the said plaintiffs proceed to show that the said defendants have no right or title thereto. And they show that, under the said act, the said defendants, if entitled to the said estates, must take for one of two purposes, namely, to apply them to the police of the consolidated municipality, the improvement of all its property, and the diminution of its entire burden of consolidated taxes, or to apply them to the police of that part of the city only which was lately governed by the mayor, aldermen, and citizens of Philadelphia, and the improvement of the city property and the general appearance of the city, and diminishing the burden of taxation in that particular region, [illegible], the region of the late city; that is, they are advised they [illegible]ke either for themselves, or in trust for the late city.

[illegible] as regards the said defendants taking in trust for the late [illegible] plaintiffs are advised that such a trust as one to improve a [illegible] its police, and to diminish its taxation, whether the same [illegible]ided to municipal or individual keeping, not being capable [illegible]ision and control by the courts of law, but referable only to the trustee's discretion, would be impracticable, and the devise would be void, and the estates comprised in it go to the heirs of the testator. And, if such were indeed the character of the said devise, the plaintiffs ask, at the hands of the court, the benefit of their position as heirs-at-law, the devise being void. But they submit that the testator, in providing for the said municipal uses, did not create, or intend to create, a trust, in the sense of his trusts for the college for orphans, and for poor-house and room-keepers; namely, one in which the trust is an interest separate from the beneficial interest, and from which the trustee could be removed, but in the sense only in which every gift to a public body is a trust, and in which the devises of the testator to the city of New Orleans and the Commonwealth of Pennsylvania are trusts.

That they are advised the fund to maintain the college belongs to the college, and the mayor, aldermen, and citizens of Philadelphia

were trustees of it only; but that which was devised to municipal uses was their own, and belonged to them, with no other qualification than that it should be applied to certain designated improvements, and to diminish the burden of taxation.

That if, deeming its burdens greater than its benefits, the mayor, aldermen, and citizens of Philadelphia had refused the bequest wherewith to found the college, the courts of law would have supplied some other trustee for it; but if they had refused the legacy to municipal uses, that is the legacy to themselves, the disclaimer would have been effectual. That the fund could not have been forced on them, nor appropriated to their police, taxes, or improvements contrary to the will of the municipality; and that, in the event of disclaimer by the corporation, as in the event of dissolution of it, estates so devised to municipal uses must return to the donor.

That they are advised the courts of justice might lawfully have visited and controlled the administration of the trusts committed to the mayor, aldermen, and citizens of Philadelphia, to maintain and educate poor orphan children, and relieve poor-house and room-keepers to the same extent, and with the same effect, as they might had those funds been committed to the hands of individual trustees, the management thereof being not necessarily a municipal function; but that they could have interfered with the city government in the administration of a fund devised to improve its police and its property, and diminish the burden of its taxation, only as they might have interfered with their administration of a like sum raised for like objects by loan or taxes.

That there is no difference of trust character between the devise to the State of Pennsylvania of three hundred thousand dollars for the purposes of internal improvement by canal navigation, and that to the city of Philadelphia, to improve their police and their property, and the general appearance of the city, and to diminish the burden of taxation, excepting only that the first is devised to State sovereignty and the latter to municipal. That neither of them is a trust of which the trustee could be changed; with the administration of which the courts could interfere; nor for which it would be so much as in their power, were the trust vacant, to appoint trustees.

That the devise to the corporation of the city of New Orleans is, in the testator's language, denominated "a trust," though bestowed without limitation or restriction, other than that of the broadest discretion of the municipality. That he says, "I give, devise, and bequeath," in the nineteenth clause of the will, "to the corporation of the city of New Orleans, their successors and assigns, the remaining one undivided third part of the said lands in trust in common with the mayor, aldermen, and citizens of Philadelphia," "to sell and dispose of their interest in said lands, gradually, from time to time, and to apply the proceeds of such sale to such uses and purposes as the said corporation may consider most likely to promote the health and general prosperity of the inhabitants of the city of New Orleans," the direction to apply it to the health and general

prosperity of the place, making a gift, than which, one to the corporation, their successors, and assigns, the plaintiffs are advised, would not be in more unqualified ownership; yet declared, by the testator, to be, and being, "in trust."

That the devises to the said two cities were devises in trust, but in trust for themselves; the gift to the city of New Orleans to improve its "health and general prosperity" being without qualification; and that to the city of Philadelphia, to improve their police, their property, and the general appearance of the city, and to diminish the burden of taxation, being qualified by its limitation to certain defined uses; and they are advised that, to the mayor, aldermen, and citizens of Philadelphia, as well as to the corporation of the city of New Orleans, the estates severally devised to them by Mr. Girard pertained and belonged in proprietorship, and not in trust in any sense distinct from that of proprietorship.

But these plaintiffs are advised that, while it imports them to aver and state, if they are able, the relation, whether of conditional trust or conditional ownership, or other, on which the late corporation held the residue, so to municipal uses, as aforesaid to them bequeathed, the claim of the defendants, be it for themselves or for the inhabitants of the late city, must ultimately depend on their being able to establish that the will can be carried out, and its conditions performed and satisfied, since the new charter; for the plaintiffs are advised that, as the devise, if it were in ownership, must needs remain subject to the conditions imposed by the testa-
16 tor, so if it were in trust, was a trust which must end with the surcease of the objects for which it was created, or with the possibility of fulfilling them. And the plaintiffs proceed to set forth that it is now no longer possible Mr. Girard's will should be fulfilled, by any means, or its uses performed, or conditions complied with by the consolidated city, or any other party, whether such party held for themselves merely, or in trust for the late city; and that the possession by the present corporation of these devised estates being, at the same time, incapable of fulfilling their uses and conditions, is a fraud on the will of the testator.

And first, they are advised that the present city being the county of Philadelphia of the day of Mr. Girard, and the late city but one of its twenty-nine municipalities, and the testator having excluded from participation in the devise all parts other than that to him known as the city, the defendants cannot take and hold these estates for themselves, namely, for the region of the twenty-nine late municipalities, twenty-eight of which were not devised to. That if it were in the power of Mr. Girard to bequeath to one geographical district to the exclusion of all else, and he have exercised it, no authority could make over his property to other districts contrary to his will. That the plaintiffs are not advised that the capacity of the devisees to take and hold the estates bequeathed to the late city would necessarily be affected by addition to their territory, or even the annexation of another municipality; but they are advised that the annexation of twenty-eight municipalities, and the addition of

sixty-four times more territory, with room for sixty-four times more population, and now nearly four times as much, has such effect.

That the late city might have been altered, its franchises extended over more territory, and its capacity and existence moulded at the pleasure of the power that gave them, but not to the alteration of the testamentary uses and conditions declared by Mr. Girard. That the mayor, aldermen, and citizens of Philadelphia cannot apply a fund bequeathed to make their improvements and diminish their taxes to other objects, because, by reason of an amendment of the charter or dissolution of the corporation, it can no longer be used as devised. That the title of the defendants as against the plaintiffs, to this property, in their new municipal position under the charter of 1854, is no other than it would be if the consolidation of the city had been with any other places, or any other, however vast, portion of the territory and population of the State, which the legislature might be pleased to incorporate together; no other than, if, instead of being centralized in their county, the twenty-nine municipalities had been with all the local governments of the whole Commonwealth drawn to a common centre at the capital of the State. That although the limits and franchises of a municipal corporation be liable to change, its contracts with third persons, or devises from them, are, so far as these persons are concerned, like those of a private corporation or an individual; and the legislature, not being able to impair them, could not, after a testator had bequeathed to pay the taxes and improve the police and property of a certain place, enact a law to extend his bequest to make improvements and pay taxes in other places also.

And the plaintiffs are informed and believe that these defendants have signified their own understanding, that if they can hold these estates, it must be, not for the present, but the late city. That the sixth section of the twenty-first clause of the will of the testator having declared that the maintenance and education to be provided at the college for orphans, should be for the benefit "first" of "orphans born in the city of Philadelphia," and "secondly," for the benefit of "those born in any other part of Pennsylvania;" and prior to the consolidation act, the number of orphans, candidates for admission to the institution, born in the city of Philadelphia, as it then existed, being so great that places could not be found in the college for all of them, and those coming from other parts of Pennsylvania being by reason thereof excluded, it became, immediately upon the so-called enlargement by the charter of 1854, of the limits of the city, a question for the consideration of the defendants, whether they were to admit as "orphans born in the city of Philadelphia," those born in what the testator denominated "other parts of Pennsylvania," but now included within the city, or only those born within the limits of that which was the city at the making and
17 proving the will; and the said defendants thereupon did come to, and have acted upon, the conclusion that while the State could, at their pleasure, enlarge the limits of the city, they could not alter the uses of the will, or enlarge the benefits of the college

beyond those who were orphans born in the "city of Philadelphia," as it was understood by and known to the testator; namely, the late city and not the present city; and accordingly the defendants refused admission to the college to orphans, otherwise qualified, if not born within the boundaries of the old city.

And the plaintiffs are informed and believe that since the drafting of this bill, in order to the final ascertaining and settlement of their right to exclude from the said college all orphans born without the said ancient limits of the city of Philadelphia, until those born within the same should have been served, the defendants have made a case presenting the question of such right, and taken the opinion thereon of the supreme court of Pennsylvania, and that by the final and solemn judgment and decree of that tribunal, it has been ruled that the defendants are not authorized by the will, and have no right in law or otherwise, to admit to the benefits of the college orphans born beyond the ancient city limits until all those born within the same have been provided for; that is to say, it has been so decided that the city of Philadelphia, the devisee of the testator, is the late city and not the present city.

And the plaintiffs, therefore, assuming that the defendants here set up title, not for themselves, but for the late city, to which the devise was made, and that they pretend to no other; not attempting to appropriate the testator's bequest to the consolidated municipalities, as established and bounded under the act of 1854, proceed to show, that it is contrary to the text of the will, and altogether incompatible with its purposes, that the defendants should take for the late city, or take for the citizens of the late city, or take in any manner whatever, the property devised by the testator to the mayor, aldermen, and citizens of Philadelphia, to improve their police and their property, and diminish the burden of taxation. That the said devise to the late city was in its nature and character, essentially, a devise to municipal power and discretion; a power and a discretion controlled and controllable only by its own proper citizens; and that to disunite the control from the beneficial interest, and give the command of it to those who are not citizens of the city devised to, is to violate the will in its most indipensable feature. That neither is the present city capable of administering, nor are the citizens of the late city capable of enjoying at the hands of the present city, or of any but a municipal government of which they are the sole constituency, the uses provided for by the testator.

That they are advised the testator's design to provide for certain municipal uses, to meet which he devised to the municipal power of the place, cannot be carried out, or be so much as approached, when the city to which he devised has ceased to have substantive existence and substantive power. That with the extinction of the independent condition of the municipality to which the devise was to be applied, and the government which was to apply it, by whatever means effected, whether by dissolving the corporation, or merging it into another, the whole object of the testator falls, finally, to the ground. That the persons designated by him to be nurtured at his college,

may receive their bounties, which are individual bounties, as well since as before the disappearance of the municipality, to whose care they were left; but not so the persons composing the municipality devised to, who were to be advanced as a community. That improving the condition of a city and diminishing the burden of its taxes, a communal benefit, seemed to the testator to be, and actually was, attainable in no other way than by a devise to the community as a municipal sovereignty. That, in making his devise, he devised exclusively and directly to the community which was to be improved, and the taxes of which were to be diminished, because, the uses of the gift being their own uses, and the performance of them pertaining to the administration of their government, their performance not only could not be made safe, but could not be obtained at all, in any other manner than by giving the fund to the city, to which it
18 was to belong, and whose citizens were the constituency, to protect, use, and enjoy it. That a gift to a municipality to improve its condition and diminish its taxes, presupposes the discretion and power to make those improvements and diminish those taxes, a power and discretion which terminate with its independent existence, and into the exercise of which power and discretion enter political functions, which can be supplied from no foreign or other municipality, and by no trustee whatsoever.

That to place the concerns of police, taxes, and improvement of a municipality in the hands of an individual trustee, would not be more inadmissible than to give them to a municipality whose authorities were foreign to or not exclusively the representatives of the citizens for whom they were to be administered. That Mr. Girard's municipal bequests must needs have been a failure had he devised to the mayor, aldermen, and citizens of Philadelphia the fund to be applied to the health and prosperity of the city of New Orleans; and to the city of New Orleans the fund for improving the city of Philadelphia. That the municipal office is exercised when the city of New Orleans improves its own police and diminishes its own taxes; but would not be exercised at all when it improved the police or diminished the taxes of the city of Philadelphia.

That this fund was given to political power, self-governing, municipally independent, and measured to the surface to be improved and taxed; but now, since the 30th June, 1854, having no separate existence, no longer independent, but consolidated, absorbed, and lost in surrounding territory and population. That from a municipality which had a basis of territory and population equal to that to be benefited they have been taken away, and transferred to one with a basis of population of which the population to be benefited forms but twenty eighty-fifth parts, and a basis of territory of which the territory to be benefited forms less than a sixty-fifth part; the political power to which the uses were devised, if it exist at all, and be not extinct, being in presence of another power between four and sixty-five times stronger than itself; a change which affects the devise to the college to the extent of giving it a new trustee, but totally destroys the devise to municipal uses. And the plaintiffs aver that the uses be-

queathed to be performed by the mayor, aldermen, and citizens of Philadelphia would be better served had they been passed over, not to the consolidated authorities, but to those of New Orleans or of New York, for those municipalities would not have, like the present city, an interest immediately opposed to their performance. That the uses under Mr. Girard's will are, by the act of 1854, provided with a trustee, or superior, unknown to the testator, whose office, nominally to take care of them, is in fact, to postpone them to its own interests, and take for themselves.

That his purpose is frustrated, as soon as a separation is effected between the municipal power or party that is to perform the uses of improving the police and city property, and the general appearance of the city itself, and to diminish the burden of taxation, and those that are to profit by their performance. That when such separation takes place, and a trustee is interposed, as in case of a vacant trust, the municipal power and discretion to which the testator devised is at an end, and the will cannot be executed. That it was not for the late city to obtain, at the hand of the legislature, more than at that of the courts of law, the appointment of a trustee to take their place. That they could not have resigned in favor of the county officers, nor have obtained, under the will, authority to transfer the devised estates to the twenty-nine unconsolidated municipalities of the county, for the use of the city; nor does the consolidation of those twenty-nine municipalities bring them any nearer to the purposes of the testator. That if the old corporation was a trustee capable of being removed from the power to perform these functions, and of being replaced with another, so is the new corporation which has succeeded it; and on proof made of infidelity to the municipal uses of the devise, the present city of Philadelphia, these defendants might be removed by the courts of law from the office of employing this fund on the police and city property, and the diminishing of the burden of taxa-
19 tion, and some other corporation, or individual, selected by the courts and appointed in their stead.

And the plaintiffs also submit that as the will can be executed only as made by the testator, and not on a rule of expediency, the devise is not to be handed over to these defendants, not being the devisees, though really they could administer its uses, and could diminish the burden of taxation for the inhabitants of the late city, and could make their improvements. That if the late municipality, without having been, in legal acceptation, dissolved, has disappeared, or ceased to be capable of holding the bequest of the testator, and the new municipality is unable to take and hold for itself, there then remains of the devisee only territory and population, to which, in the absence of their municipal rights and privileges, the testator did not devise; but in the exactly contrary manner. That it is true territory and population entered into the intention of the testator, and were of the essence of the devise; but so did municipal franchises, which being taken away or absorbed, there is no longer a devisee. And the plaintiffs are advised that the corporators might have altered the character of their institutions, or procured their alteration, to any

extent, without affecting their legal position, as legatees of Mr. Girard to municipal uses; but that either by the dissolution of their municipality, or by the surrender of its franchises, or by their absorption in those of the surrounding country, municipal identity is lost. That all identity, for the purposes of the will, is obliterated, and no devisee is left to take, when the franchises of the citizens of the city are extended to every citizen of the county, and the constituency of the municipality, for whose benefit the municipal uses were to be performed, is mingled and lost in the constituencies of twenty-eight other municipalities.

And the plaintiffs having submitted that, by the mere fact of the extinction of the political independent power to which the said estates were devised, the will of the testator stands without a devisee, now proceed to state that, since the consolidation, it is neither administratively nor arithmetically possible to apply the income of the Girard estates to the municipal uses of the late city, without, at the same time, applying it to each and every one of the twenty-eight late municipalities not devised to, but, on the contrary, excluded by the testator from all benefit under his will. That it is not possible for the defendants to use the said estates for the late city, or in any other manner than for themselves; and that the most well-directed efforts to apply them as bequeathed by the testator would be fruitless. And the plaintiffs are advised that the fact of the consolidation is a perpetual bar to the application of the said estates to any one part more than another of the consolidated city; that since the 30th June, 1854, there is not a taxation for one part of the municipality which is not for another, but the same burden rests upon all; that the burden of taxation is now the united burdens of the twenty-nine late municipalities, and each dollar applied to meet interest or principal of the debt, or to raise revenue, for any part of the year's contingent or current expenses, or to face any municipal want whatsoever, so long as there is a consolidated debt and treasury of the city of Philadelphia, and not two debts and two treasuries, a debt and treasury for the late city, and another for the rest of the municipalities, must, by arithmetical necessity, subserve in direct violation of the will, for the purpose of paying the debt and diminishing the burden of taxation in the same ratio for all the twenty-nine late districts, townships, boroughs, and city. That the Girard fund, merely applied to diminish a tax laid to meet the interest of the public debt, or any portion of the year's expenses of the present city, must, of course, be applied to the debt or charges of the entire region of the twenty-nine municipalities, that debt and those charges belonging to all; and that if attempted to be applied to that particular part of the tax paid in the old city, it still would go to diminish the burden of taxation of all parts equally, because the taxes light, watch, pave, and pay debts in the whole consolidated region; and the plaintiffs submit that the said taxes can pay for lighting, watching, paving, and debts in no other way, so long as consolidation exists.

And they show that in one event only, an event which has
20 not happened, could this be pretended to be otherwise; had

the late city brought to the common treasury proportionally small instead of large possessions, and a proportionally large instead of small debt, and a necessity, only proportioned to that of the other united municipalities, to level, grade, and prepare for opening streets, instead of coming into the consolidation with all its expensive works made and paid for, it might be pretended that for each dollar of Mr. Girard's legacy applied to diminish the burden of taxation for the boroughs, districts, and townships, there was more than a dollar paid in return by the boroughs, districts, and townships to diminish the burdens of the city; and thereby that the city was a gainer in other directions to a greater amount than it was a loser in that of the Girard bequest. But the plaintiffs show that in the actually existing relations of the members of the new municipality, the old city's property and possessions being great, its debt small, and its wants few, in proportion with those of its neighbors, the result is and ever must be financially inevitable, that of each portion of the Girard fund, the region of each of the late municipalities receives its share, which share will be in exact ratio to the extent of its need of aid for itself, and its inability to meet the needs of its neighbors; so that the poorest of the twenty-nine municipalities must receive the largest share of the fund, and the richest, the least.

And the plaintiffs aver, that at the period of the consolidation, the taxable basis of the late city, which had wealth and large possessions, was seventy millions of value, or thereabouts, and its public debt less than those of the other municipalities; and that the taxable basis of all the rest together, namely, the other twenty-eight municipalities, was thirty-seven millions of value, or thereabouts, and their public debts greater than that of the said late city; and that their municipal unsupplied wants and necessities so prodigiously exceeded those of the said late city as to make the ratio thereof not capable of estimation.

And the plaintiffs show they are further advised that the end is also politically, as well as arithmetically and administratively, unattainable of improving the police, property, and general appearance, and diminishing the taxation of one portion and not others of the same municipality. That a legacy may be bequeathed and applied to supply fuel for the inhabitants of any quarter of a city, or educate orphan children within prescribed limits, or to widen one street and no other; but that it is not politically possible to organize and administer a system of police, or of taxation or improvement which is unequal. That police improvement and taxation must be equal. That as long as the municipality of the mayor, aldermen, and citizens of Philadelphia existed separately, the application of the bequest to its separate use was proper and possible; but, since its absorption and extinction, is neither proper nor possible, and every part of the municipality would be gainers by the omission to attempt the accomplishment of such a purpose as the unequal distribution of government protection among the citizens of the same city. That the city might be richer or poorer, worse or better governed than the adjoining districts, but when brought under the same municipal charter it covers them alike. That between Vine and South streets

the police must not be more "competent," better paid, more vigilant and faithful, "the security of the persons and property of the inhabitants" more cared for, than in the regions of the city north, south, and west of it.

That it would be vain to ask the consolidated authorities to bestow improvements on the region of the old city, to diminish the taxes, better the police, and watch over the "security of persons and property" there, while other parts of the municipality were more taxed but less improved and guarded. That the late city wards have six votes against eighteen in the select council, and twenty votes against sixty-five in the common council; that their relative population entitles them to no more, and soon will not entitle them to so much; that it is in the power of a majority already more than three to one, and constantly increasing, and the power will be exercised to take care that the same advantages of government be enjoyed by all citizens alike.

And the plaintiffs submit to the court, that if it were politically
21 and administratively possible, it would not be lawful to diminish the burden of taxation, and improve the police, and the property, and the general appearance of one part of the city, and not the rest; to make distinctions between portions of the population and territory of the same place; and that a devise to uses against, at the same time, the policy of the law, and the policy, drift, and spirit of the institutions of the country, is not to be carried into effect in its courts of justice.

And the plaintiffs proceed now to show that the general policy, also, of the will itself has been violated; that it was the object of Mr. Girard to improve, finish, and adorn an already well-appointed municipality; that his intention was, diminishing at the same time the taxation that went to support it, to elevate its standard of municipal comfort. That this design was favored by the circumstance that the late city had no suburbs to exhaust its resources; and by the charter could have none. That the city, as known to Mr. Girard, within its ancient limits, with its primary municipal wants supplied, was ripe for the sort of improvement to contribute to which was his object. That there are in his will devises to remove wooden buildings, that they might be replaced with others more safe, seemly, and commodious; devises "to remove or pull down all the buildings, fences, and obstructions" which marred the Delaware front of the city; "to completely clean, and keep clean all the docks;" "to pull down platforms carried out" into the stream of the river; to make of the wharves a broad and handsome avenue; to improve, according to a scheme to which he devotes many pages of minute description, the street in which he had lived. That on reference to the copy of the will hereto annexed, it will be seen, that excepting a few legacies, the bequest to the city of New Orleans, and that to the State, the motive for which appears when he directs that it shall not be paid until "such laws shall have been enacted by the constituted authorities of the said Commonwealth as shall be necessary and amply sufficient to carry into effect, or to enable the constituted authorities of

the city of Philadelphia to carry into effect the several improvements above specified," the whole of the testator's estate, including the portion set apart to diminish taxes and improve the city itself, and two millions to build the college, which he enjoins upon the municipal authorities to expend with "good taste," cautioning them against no ornament that was not "needless," is devoted by him to the object, studiously and consistently pursued, of improving and adorning the city, while he lightened its burdens.

And the plaintiffs show that the said policy is wholly irreconcilable with that of consolidation; a policy which assimilates the city with its suburbs. That the burden of taxation, since the 30th June, 1854, has increased largely, and improvements, in the testator's sense, have ceased, and cannot be resumed until all the area of the city plot shall be at the same point of municipal progress with the late city; a period of time not to be estimated, because additions to the suburbs going on from age to age, the region of the late city must always be engaged in paying to clear the ground for the inhabitants of those suburbs which are, one after another, to come into the close-built portion of the municipality. That the works pertaining to these beginnings of municipal progress must engross the attention, and exhaust the resources of the city, until its vacant territory is filled up. That the swamps and hills, to be brought into use by levelling and draining, before improvement or ornment can be thought of, must cost sums and involve debts and taxes enormous in their amount. That, to the three hundred and fifty miles of drained, graded, and paved streets in the city, as now built, there must be added, to accommodate a population sufficient to cover its yet unbuilt surface, nine thousand miles more; there being, at the present day, according to official statements of the consolidated authorities, which the plaintiffs are informed and believe to be accurate, more than one hundred and twenty square miles of ground still to be furnished with streets and alleys.

And the plaintiffs, therefore, show and submit to the court that, when the mayor, aldermen, and citizens of Philadelphia consolidated themselves with the said other municipalities, they made it indispensable to postpone Mr. Girard's policy of improving the city
22 and lightening its burdens an indefinite time; the rule being irresistible that a municipality can neither lighten its burdens nor add to its improvements while the work, the main source of municipal debt and taxes, that of preparing the surface of the ground for habitation, remains to be accomplished.

And by these and other means, the plaintiffs aver that if substantial compliance with the will of the testator were possible, and not impossible, the acts and proceedings of the devisees have made a change of municipal position so hostile to the performance of the said uses and conditions, as to render the accomplishment of them, to the last degree, uncertain. That by the transfer to the consolidated city of the said devised estates, it has become, not only less certain that the police of the old city will be increased, less certain its property and general appearance will be improved, less certain that

the burden of taxation will be diminished, out of the estates bequeathed to those objects by Mr. Girard, than it was prior to the act of the 2d February, 1854, and the proceedings thereunder; but, as they submit, they are deprived altogether of any certainty whatever. That the legal certainty of performance of the said uses and conditions is wholly gone, and its want of common certainty such, that the corporators of the said city have admitted, and do now admit, that no reasonable hope remains that the said devise can be applied according to the will of the testator.

And the plaintiffs show, that the corporators of the late city, when they abandoned their place under the former charter, were influenced by motives which induced them to look to the probable inability to perform these uses as a fact of inferior moment; the greatness of the result of uniting as a single city the twenty-nine municipalities leading them to the conclusion, to which the plaintiffs, in another part of their bill have referred, namely, that the bequest of Mr. Girard ought to be rejected, if it stood in the way of consolidation. And that, under the said proceedings of the corporators, it was not to legal intendment only that the said devise was disclaimed; but that it was their actual intent and purpose to disclaim, should their continuing to hold it be incompatible with what they deemed, and truly was, an interest, whether to good or ill, so much more important. That none of them believed the legacy of Mr. Girard, if it might indeed be taken to relieve the burdens of the twenty-eight municipalities to which it was not left, could sensibly diminish the taxes, or add to the revenues of so great a community as the consolidated city. That when Mr. Girard bequeathed to improve the late city and diminish the burden of its taxes, he measured his bequest to their revenue and expenditure; but the value of the bequest having disappeared with the separate existence of the city, it became almost indifferent to the twenty-nine united municipalities, whether it have, or have not, the municipal protection under which it was placed by the will, and be applied or not to the uses for which it was intended; and whether they hold it by right capable, or not capable, of vindication at law.

And the plaintiffs here state, that at another stage of the cause they will have occasion to show what has been the defendant's management of these estates; that lands of immense value produce nothing, but are an annual charge; that improved property, from which it is pretended to derive income, is let at rents unaccountably low, and bearing no proportion to those of adjoining property of equal or less worth; that expenses are multiplied, and waste and disorder prevail in the administration of the bequest of Mr. Girard.

And the defendants' right to be regarded as claimants to charitable uses, which heretofore, in this bill, the plaintiffs have not controverted, they now deny, being advised that a bequest to endow a municipality, to the improvement of its police and property, and the diminishing of the burden of its taxes, is not, by the law of Pennsylvania, a charity.

And the plaintiffs here show that the bequest of the residue of the

said estates to municipal uses, is, under the prohibition contained in the twentieth clause of the will of the testator, that any part of the said "real estate in Pennsylvania" "shall ever be sold or alienated," an attempt to create a perpetuity. And that, if not originally a successful attempt, it must become so upon the separation of those controlling the said bequest from the beneficiaries, and placing it
23 under a mere trust. That, as the plaintiffs are advised, a transfer of the said estates to a trustee without right or power to part with them, or make title, namely, these defendants, must bind them in a perpetuity of the closest kind.

And the said plaintiffs are advised to insist, and do accordingly insist, upon their position and rights as heirs-at-law of the testator, should the court be of opinion that a perpetuity was in fact created, or attempted to be created by the said terms of the said will.

And the plaintiffs are advised that their claim as heirs-at-law of Mr. Girard, upon the disappearanee of the late municipality, or its inability to carry out the devise, is not affected by the provision of the will, contained in the twenty-fourth clause, namely, that in case of breach of certain "conditions" affixed to the bequest to the mayor, aldermen, and citizens of Philadelphia, it should go over to the Commonwealth of Pennsylvania; and afterwards to the United States of America, in case of breach of the conditions affixed to the said bequest over to the Commonwealth. That, as they are advised, the Commonwealth of Pennsylvania is not to take and hold the estates in case of the inability of the city; nor the United States of America to take and hold them in case of the inability of the Commonwealth; but the titles of the State and the United States, severally, can accrue only on breach of certain conditions, none of which have been broken, or supposed to be broken; the event which has happened, as aforesaid, being, not a breach of condition, but an extinction or failure of corporate powers. And they are advised that such a case is nowhere contemplated by the testator, or provided for in his will; and, so far from the consolidation of their franchises making a breach of condition, the mayor, aldermen, and citizens of Philadelphia might have incurred a forfeiture of all their franchises, and lost their charter entire, without breaking one of the conditions of the said devise.

And the plaintiffs now proceed to show to the court, than on the 15th April, 1842, by decree of the orphan's court of the county of Philadelphia, the executors of the last will and testament of the said Stephen Girard, were duly discharged from their office as such executors, and from all duty and liability under the said will. having first settled their accounts according to law and delivered up to the mayor, aldermen, and citizens of Philadelphia, as the residuary legatees of the testator as aforesaid, all property, assets, and estate whatsoever in their hands or keeping, and having performed and executed all duties upon them under the said will incumbent, as in and by the said decree of the said court set forth, and that all the estate, thereupon, of the testator, which by the said will should and theretofore had not already come to the hands or possession of the said the mayor, aldermen, and citizens of Philadelphia, did forthwith to them

pass according to the terms of the said hereinbefore mentioned devises thereof; and that after separating and setting aside from the income of the residuary estates bequeathed by Mr. Girard to the mayor, aldermen, and citizens of Philadelphia a sum sufficient to meet annually all the expenses of the college, and for its "further improvement and maintenance," as directed to be paid by the twenty-fourth clause of the will, and to meet legacies, taxes, repairs of real estate, and all other liabilities and charges, including the five hundred thousand dollars to Delaware avenue and other objects, and the ten thousand dollars to poor house and room keepers, which go to debit of the income of the said estates, there remains applicable, according to the terms of the will, to the aforementioned objects, but not applied by these defendants, and which they are not capable, for the causes hereinbefore set forth, to apply to the same, namely, "to enable the corporation of the city of Philadelphia, to provide more effectually than they now do for the security of the persons and property of the inhabitants of the said city, by a competent police, including a sufficient number of watchmen really suited to the purpose;" and "to enable the said corporation to improve the city property and the general appearance of the city itself, and in effect to diminish the burden of taxation," a very large and annually increasing sum, the proceeds of the now income yielding portion of the said residuary estate, so bequeathed to the mayor, aldermen, and citizens of Philadelphia; of which surplus income, together with the capital thereof and other income, capital, estates, and interests hereinafter mentioned, the said plaintiffs, as heirs-at-law of the testator, here claim their ratable portion.

24 And the plaintiffs show that at the time of the filing of this bill, after the great expenditures in building, fitting, and establishing the said college, which they aver is now completely built, fitted, and established; and, after the various losses that have been sustained of both personal and real estate of the testator, there remains in the hands and possession of the said defendants, property, real and personal, as follows, namely: of real estate in those parts of the city of Philadelphia which, before the consolidation act, were the old city and liberties, one hundred and eighty-two dwelling-houses and stores, five vacant lots of ground, and two wharves; and also of real estate, in that part of the city of Philadelphia which, before the consolidation act, was the township of Passyunk, four hundred and thirty-seven and three-fourths acres, with the improvements thereon; also of real estate in that part of the city of Philadelphia which, before the consolidation act, was the district of Moyamensing, one hundred and twenty-nine acres, with the improvements thereon; which said items of property comprise the real estate late of the testator in the present city of Philadelphia, known to these plaintiffs to be in the hands and possession of the defendants, excepting only the said college building and grounds; and also of real estate in the counties of Schuylkill and Columbia, in the State of Pennsylvania, twenty-nine thousand four hundred and thirty-two acres, being lands containing anthracite coal; and of real estate in the county of Erie, in the State of Pennsylvania, three thousand and sixty-four acres; and of real

estate in the State of Kentucky, four thousand seven hundred and seventy-five acres; and of personal estate, consisting chiefly of investments in the public loans of the State of Pennsylvania, the city of Philadelphia, the Schuylkill Navigation Company, the Chesapeake and Delaware Canal Company, the Philadelphia Exchange Company, the Danville and Pottsville Railroad Company, the Philadelphia County Public Loan, and the Guardians of the Poor Public Loan, the sum of about one million and one hundred thousand dollars.

And the plaintiffs aver that there remains also in the hands and possession of the said defendants, of the real and personal estate of the said testator, other real and personal estate, to these plaintiffs not known. And the plaintiffs show that the said real estate in the present city of Philadelphia, property selected by Mr. Girard as of the most substantial and available kind, and situate, for the most part, in the most eligible parts of the town, and capable of being kept always under leases advantageous to the proprietor, is of an annual value or rental of two hundred and fifty thousand dollars, according to the existing rate of rents of real estate situate and improved as is the aforementioned; from which amount of two hundred and fifty thousand dollars, if one-fourth or sixty-two thousand five hundred dollars be deducted for the expenses of the year, of every kind, including taxes, repairs, and charges of collection and agency—which is a much larger sum than is therefor expended—there is left one hundred and eighty-seven thousand and five hundred dollars for the net annual income of the said real estate situate in the present city of Philadelphia, and which the plaintiffs aver to be the net income thereof annually.

And the plaintiffs show that the said personal estate, so as aforementioned invested, yields annually, in dividends on capital stock, and interest on loans, the sum of sixty two thousand dollars, which the plaintiffs aver to be the income thereof annually; from which is to be deducted thirty thousand dollars, being the interest on the capital of five hundred thousand dollars bequeathed by the testator to mayor, aldermen, and citizens of Philadelphia, to improve Delaware avenue and Water street, and pull down and remove wooden buildings, and six hundred dollars being the interest on the capital of ten thousand dollars bequeathed to the mayor, aldermen, and citizens of Philadelphia for the benefit of poor white house and room keepers; and from which sixty-two thousand dollars, the income of the said personalty, and one hundred and eighty-seven thousand and five hundred dollars, the aforesaid net rental of the said real estate situate in the present city of Philadelphia, is to be deducted for the annual expenses of the college, including all charges whatsoever, the sum of seventy-three thousand dollars, which the plaintiffs aver covers more than such expenses and charges; and which sums of thirty thousand dollars and six hundred dollars, and seventy-three thousand dollars, include all deductions and abatements of any kind to be made from the income of the said real and personal estate that should precede the application of the same, under the will of the testator, to the said objects of improving the police and the property of the city, and the general appearance of the city itself, and dimin-

ishing its burden of taxation; and after the making of which deductions, the balance remaining of the said income is applicable to the said objects, and which balance, if the said objects be not, now, since the consolidation attainable, belongs to, and should be of right enjoyed by the heirs-at-law of the testator.

And the said plaintiffs aver, that there has been so payable, on the income of the property in the city of Philadelphia alone, yearly and every year since the 30th June, 1854, to the heirs-at-law of Mr. Girard, the sum of one hundred and forty-five thousand nine hundred dollars; such being the said balance of the income of personalty and realty situate in the city of Philadelphia; and that there will be so payable, each and every year forever, a like sum out of the income of the said personalty and the realty situate in the present city of Philadelphia; assuming no enhancement to take place in the value of the said dwellings and stores in the late city and liberties, and of the said ground in the late township of Passyunk and the late district of Moyamensing; the said sums of thirty thousand dollars and six hundred dollars so as above placed to the debit of the said annual income, being, according to the will of the testator, sums fixed, and not capable ever to be greater than now they are; and the said seventy-three thousand dollars, so as above placed to the debit of the said income, as the annual outlay for the college, being as aforesaid, beyond the average sum thereupon annually, during the past five years, expended, including enlargements and additions to the capacity of the college.

And the plaintiffs, for greater certainty, here shows in figures the facts last above stated, namely:

Gross income of personalty		$62,000	
Deduct for income of $500,000, at 6 per cent., to provide for the improvements of Delaware avenue and Water street, and the pulling down and removal of wooden buildings	$30,000		
Deduct for income of $10,000, at 6 per cent. to provide fuel for poor house and room keepers	600		
		30,600	
			$31,400
Gross income of realty in the city of Philadelphia		250,000	
Deduct for taxes, repairs, agency, and all other charges		62,500	
			187,500
			218,900
Deduct annually for college			73,000
Balance of income annually arising from personalty and realty in the city of Philadelphia, after paying all charges against the same			145,900

And the said plaintiffs aver that large sums of money, of an amount to them now unknown, but which will appear on the settlement of the account hereinafter prayed between the said defendants and your orators, being the accumulations of the surplus income of the said residuary estates of the testator, beyond the sums applicable and applied to the said college, and improving Delaware avenue and Water street, and pulling down and removing wooden buildings, and providing for poor house and room keepers, and paying for taxes, repairs, agency, and all other lawful charges against the said estate, remain and now actually are in the hands and possession of the said defendants, not by them appropriated, nor have they attempted to appropriate, nor can they appropriate the same, or any portion thereof whatever, for the causes in this bill aforestated, to the said municipal uses of improving the police and property of the city, and its general appearance, and to diminish the burden of taxation,
26 either in the now existing consolidated city, or in that part of the region thereof which was the late city.

And the said plaintiffs aver that there has been, both by the late corporation, the mayor, aldermen, and citizens of Philadelphia, and by the present corporation, these defendants, unnecessarily and wrongfully expended on the repairs, agency, and other expenses of the said estate, real and personal, of the testator, large sums of money, and there have been by them otherwise expended, lost, sunk, wasted, and misapplied other large sums of money, which the said defendants are not lawfully and equitably entitled to credit for in settling the account hereafter prayed between the said defendants and your orators.

And the plaintiffs, showing that, if, as they aver, the title of the heirs-at-law of the testator, as against the parties in possession of the residuary estates, authorizes them to demand, after the wants of the college shall have been met, what remains of the said residuary interest which was, before the said consolidation, applicable to the improvement of the police, and of the city property, and of the general appearance of the city itself, and to diminish the burden of taxation, and now, since not capable of being so applied, submit to the court here that the immensity of the value of the said lands in the counties of Schuylkill and Columbia, and their vast capacity for annual yield and productiveness, which is, in proportion, yet more prodigious than their value reckoned in capital, are such as to place it beyond doubt that the said lands, if brought into use in any manner, and with however little judgment, whether by sales, or by leases for terms of years, or by working the mines, must give a return, which, after all wants of the college were supplied, including the largest allowance for adding to the buildings, increasing the number of orphans to be maintained and educated, and enlarging in any conceivable lawful way the establishment, would leave very large sums of money to be divided annually or otherwise among the heirs of Mr. Girard. That the tract of coal lands devised by the testator to the mayor, aldermen, and citizens of Philadelphia, and never mined or used, is fourteen miles in length, containing, in the two counties of

Schuylkill and Columbia, the number, twenty-nine thousand four hundred and thirty-two aforementioned of acres; and is well known to those acquainted with the coal trade and country. That it has been repeatedly set down in public reports, works, and documents, containing the results of scientific examinations by official persons and explorers, and writers of authority on this region, as capable of yielding more abundantly, in point of quantity, coal of a richer, purer, and more unalloyed kind and quality than any other coal beds that exist. That worked upon the system usual with proprietors of mines, on leases for twenty years, at so much to the landlord at the pit-mouth upon each ton of coal mined and taken out, the revenue from these mines, though not now, by these plaintiffs, in advance of the experiment, susceptible of accurate estimate, and which must in a degree always depend on the energy and skill with which labor and capital is applied to them, and the amount of force employed, may be counted as many times exceeding in sum all the rest of the income of the Girard possessions together; and as, in fact, making the profits and rents of the other lands and property of the testator comparatively insignificant; and such the plaintiffs are informed and believe and aver to be the actual capacity for production of those lands.

And the plaintiffs, further showing that, as heirs-at-law of the testator, being entitled to what remains of the said residuary estate, after the liabilities above mentioned and the uses of the college shall have been satisfied and served; and a large surplus remaining, as the plaintiffs have above shown, out of the interest of and dividends upon the personalty aforementioned and the rents of the said houses in the late city and liberties, after the said uses and liabilities have been served and satisfied; and the rest of the said residuary
27. estate which is in addition to and beside the said houses in the late city and liberties and the said personalty, namely, the said lands in the late township of Passyunk and district of Moyamensing, and the said lands in the counties of Schuylkill and Columbia, and the said lands of the testator in other parts of Pennsylvania and in Kentucky, being property remaining free and clear, and which there is no possibility can be required to serve the said college or meet the aforementioned liabilities under the will, the plaintiffs are advised, and they submit to the court here, that they are not only entitled to receive whatever income the said residuary estate yields, and is capable of yielding, beyond the wants of the college and the aforementioned liabilities of the residuary estate under the will, but that they are entitled, moreover, to ask, and they ask accordingly at the hands of this court, that the said lands in the late district of Moyamensing and township of Passyunk, and in the counties of Schuylkill and Columbia, and in other parts of Pennsylvania, and in Kentucky, be placed, subject always to the order, control, and directions of the court, in the possession, keeping, and management of the said plaintiffs; in order that, subject to such order, control, and directions of the court, they, the said plaintiffs, may, by improving, leasing, and cultivating the said lands in the late district of Moyamensing and

township of Passyunk, and by working or leasing the said coal mines, and leasing and cultivating the said lands in the counties of Schuylkill and Columbia, and in what other lawful manner soever, hold, possess, use, mine, lease, farm, and improve the same, as may be most to the profit and advantage of them the said plaintiffs; provided always, that such possession and use be consistent with the possibility, if the court shall adjudge there be such, that the said lands may be one day required to bear part of the burden of serving the said college, and meeting the aforementioned other liabilities under the will of the testator.

But considering that the said two legacies or trusts aforementioned, one of five hundred thousand dollars and the other of ten thousand dollars, are both protected by directions of the testator now fully complied with, that the said sums be set aside and securely invested for their proper objects, in order to the application of the income thereof, according to the terms of the will, and that, excepting the uses of the college for orphans, the said two legacies of five hundred thousand dollars and ten thousand dollars, and certain annual payments or annuities, to the amount, as the plaintiffs are informed and believe, of about eleven hundred dollars, which will fall in at the termination of lives now in being, there is no other use, payment, or debt, of any sort to which the said residuary estate is liable; the plaintiffs are advised, and here suggest, that the court will, in the exercise of their equitable and just discretion, not confine their order and decree to permitting the said plaintiffs to possess, use, and make profit merely of the said lands, but as regards the same or such part of the same as can in no probability, however remote, be needed to meet the liabilities and uses aforementioned remaining to be satisfied and served, will order and adjudge that the said lands or such part of the said lands as cannot so be needed, do pass in such portion as may be due thereof to the said plaintiffs, as certain of the said heirs-at-law of the testator, free of reclamation against the same by these defendants for any purpose or under any pretence whatever.

And the plaintiffs here show that the investments made by the late corporation, the mayor, aldermen, and citizens of Philadelphia, and now held by the defendants, the present city of Philadelphia, for the purpose of securing, and the plaintiffs aver they do amply secure, to their several objects the said legacies or trusts of five hundred thousand dollars and ten thousand dollars, are as follows, namely: to secure the said sum of five hundred thousand dollars in the five per cent. loans of the State of Pennsylvania, the sum of fifty-six thousand five hundred and seventy-seven dollars and thirty-two cents; in the five per cent. loans of the city of Philadelphia, one hundred and forty-nine thousand dollars; in the six per cent. city of Philadelphia gas loans, ten thousand dollars; in the capital stock of the Insurance Company of the State of Pennsylvania, four thousand four hundred dollars; in the capital stock of the Union Canal Company of Pennsylvania, five hundred and fifty dollars; in the six per cent.
28 loan of the Schuylkill Navigation Company, two hundred and fifty-five thousand three hundred and twelve dollars and eighty-

four cents; in the capital stock of the Philadelphia Mutual Insurance Company, two hundred and fifty dollars; and in the Schuylkill Navigation Company loan, thirty-eight thousand three hundred and ninety dollars and seventeen cents; and to secure the said sum of ten thousand dollars in the six per cent. loans of the Schuylkill Navigation Company, nine thousand and eighty-nine dollars and thirty-seven cents, and the balance of the said sum in cash.

And the plaintiffs submit that the mayor, aldermen, and citizens of Philadelphia, having, according to the directions of the testator, separated the said sums of five hundred thousand dollars and ten thousand dollars severally from the rest of the assets of the estate, and invested the same as required by the terms of the will for the said two special objects respectively, have thus fully performed their office so far as concerns first the separation and afterwards the investment of capital for the purposes of the said two legacies; and if the said investments should at any time now or hereafter be lost, or for any reason prove insufficient to the said objects of securing the said two legacies, no other portion of the assets of the estate could be lawfully taken or resorted to, in aid of the said legacies of five hundred thousand dollars and ten thousand dollars; so that, in fact, they are no longer and have never been since the said separate and specific respective appropriations and investments were made, an incumbrance upon the rest of said residuary estate, or a charge or liability which the same could be required to meet.

And the plaintiffs having now shown as above, on the seventh page of this their bill, they declared they might and would show that if it be a question whether by the terms of the will of Mr. Girard he was to be understood as bequeathing to be used, if necessary, in support of the college, the whole remainder of the said residue of his estate or less than the whole of it, namely, the income of his real estate in the now city of Philadelphia, and the dividends of his Schuylkill Navigation Company stock, and not more, that the solution of the said question could not affect the claim of the said plaintiffs, the estates of the testator being so vast as to leave large amounts of both capital and income coming to these plaintiffs after the college should be served no matter how liberally, they now also claim that they are entitled to receive at the hands of this court all of the estates of the testator aforementioned comprised in his said residuary estate, not being his "real estate in the city and county of Philadelphia" or his "Schuylkill Navigation Company stock" in present possession free of all future demand thereupon by the defendants or any other party, the same being, as they are advised, in no event applicable to the purposes of the said college, to which only the said income of the real estate in Philadelphia and the dividends of the testator's Schuylkill Navigation Company stock are, by the terms of the will, applicable in the event of the exhaustion of the said fund of the said two millions of dollars.

All which actings, doings, omissions, and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orators in the premises.

In consideration whereof, and for as much as your orators can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable, to the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief prayed for, and may, upon their several and respective oaths, to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written they are respectively required to answer, that is say—

1. Whether the said Stephen Girard did not die, as in the bill stated, resident of Philadelphia, seized and possessed of property of the amount and value as in the bill stated, and whether the plaintiffs are not of kindred with him, as in the bill stated.

2. Whether the said Stephen Girard did not leave a will,
29 proved at Philadelphia the 31st of December, 1831, and whether the exhibit, marked A, to the plaintiffs' bill annexed is not a true copy thereof?

3. Whether the municipality, called the mayor, aldermen, and citizens of Philadelphia, was not established and chartered with boundaries as stated in the bill; and whether the said municipality was not by proceedings, as stated in the bill, under the act of the 2d of February, 1854, of the general assembly of the Commonwealth of Pennsylvania, consolidated with the other twenty-eight municipalities of the county of Philadelphia, as one municipality, by the name of the city of Philadelphia? and whether their franchises, debts, taxes, administration, and all other things to them municipally pertaining, were not also then and there, in the manner stated in the bill, consolidated?

4. Whether the consolidation charter was not duly accepted by the corporators of the former city of Philadelphia, and those of the other twenty-eight municipalities of the county? and whether they, the said corporators, did not petition the general assembly of Philadelphia therefor, and instruct their senators and representatives to vote therefor? and whether they did not vote therefor accordingly; and whether the municipal authorities of the former city of Philadelphia did not forbear to oppose the annulling or taking away of their then existing charter purposely, that the general assembly might, under the pressure upon them of the corporators, annul or take away the same, and consolidate the said former municipality with the twenty-eight other municipalities of the county?

5. Whether the said defendants, as to the property devised by the said testator to the mayor, aldermen, and citizens of Philadelphia, to improve their police and their property, and the general appearance of the city, and, in effect, to diminish the burden of taxation, hold the same for themselves, the said defendants, or for the late city, or the region or citizens thereof?

6. Whether the defendants have ever applied, and when, any, and what part or portion, and what sum of the said so devised property

to the said municipal uses in the last interrogatory mentioned, or to any, and which, of those uses?

7. Whether the defendants do not now hold, of the property of the said Stephen Girard, the real estate in the bill mentioned, namely, one hundred and eighty-two dwelling houses and storehouses, and five vacant lots of ground, and two wharves or docks, within the bounds of what were, prior to the consolidation act, the city and liberties of Philadelphia; and also four hundred and thirty-seven and three-fourths acres of land in what was before the consolidation act the township of Passyunk; and also one hundred and twenty-nine acres of land in what was, prior to the consolidation act, the district of Moyamensing; and also the said college for orphans, and the land thereto pertaining; and also, in the counties of Schuylkill and Columbia, twenty-nine thousand four hundred and thirty-two acres of coal land; and, in the county of Erie, three thousand and sixty-four acres of land; and, in the State of Kentucky, four thousand seven hundred and seventy-five acres of land? And whether the said realty in the old city and liberties, the late township of Passyunk and late district of Moyamensing, is not of the gross annual value of more than two hundred and fifty thousand dollars, ($250,000,) and of a clear annual value of more than one hundred and eighty-seven thousand five hundred dollars, ($187,500;) and whether they hold any, and what other realty, of the estate of the said Stephen Girard, and where situate, and of what value.

8. Whether the said defendants do not hold, of the property of the said Stephen Girard, the personalty in the bill mentioned amounting to in value eleven hundred thousand dollars ($1,100,000) or thereabouts, yielding an annual income of sixty-two thousand dollars, ($62,000,) and whether they hold any and what other personalty of the estate of the said Stephen Girard, and of what value?

9. Whether the defendants do not hold, as set aside by the mayor, aldermen, and citizens of Philadelphia, and separate and apart from other property or investments, the two sums of five hundred thousand dollars ($500,000) to improve Delaware avenue and Water street, and to pull down and improve wooden buildings, and ten thousand dollars ($10,000) for the use of poor white house and room keepers.

10. Whether if from the said $62,000 the said income of the said personalty, and the said $187,500, the said income of the said realty, situate in the present city of Philadelphia, beyond that so set apart, there be deducted the said sum of seventy-three thousand dollars ($73,000), for the expenses annually of the said college, there is any other and what deduction or abatement that ought to be made from the income of the said real and personal estate, which should precede the application of the said income, under the will of the testator, to the said objects of improving the police and the property of the city, and the general appearance of the city itself, and diminishing the burden of taxation; and which, if the said objects be not, since the consolidation, lawfully attainable, belongs to, and should of right, be enjoyed by, the heirs-at-law of the testator?

11. Whether there has not been payable out of the said income of the said personalty, and the said realty in the city of Philadelphia, alone, yearly and every year, since the 2d February, 1854, to the said heirs-at-law of the testator, the sum of one hundred and forty-five thousand nine hundred dollars, ($145,900,) and whether there will not be hereafter annually payable to them therefrom a like sum, even supposing no enhancement to take place in the value of the said real estate in the said city?

12. Whether now there are not large sums of money, and to what exact amount, remaining in the hands of these defendants, being the accumulations of the surplus income, of the said residuary estates of the testator, beyond the amounts applicable, and which have been applied to the said college, and to improving Delaware avenue and Water street, and pulling down and removing wooden buildings, and providing for poor house and room keepers, and for paying taxes, repairs, agency, and all other lawful charges against the said estates; and which surplus the defendants do not appropriate, and have not appropriated, and have not attempted to, nor can appropriate, to the said municipal uses of improving the police and property of the city and its general appearance, and to diminish the burden of taxation, either within the bounds of the present or late city?

13. Whether if the coal mines of the said lands in the counties of Schuylkill and Columbia were worked and made, in proportion to their capacity, reasonably productive, the income of the estates of the testator would not be so immensely increased, as to very far exceed any amount capable of being expended by the defendants, under the will, unless applied to the said municipal uses of improving the police and property, and general appearance of the city, and diminishing the burden of taxation?

14. Whether, beside the liabilities severally and specially aforementioned, the estates and income of the testator are liable to any other by the terms of the said will, or otherwise, excepting only certain annuities, amounting to about the sum of eleven hundred dollars, ($1,100,) and whether those are not from time to time falling in with the lives of those to whom they are now due and payable. And the defendants are required to append to their answer to these interrogatories full and accurate copies of all accounts and writings showing what from year to year have been, and now are, the annual receipts of and from the said estates, and what they might be increased to by bringing into activity those portions of the same now idle and unproductive, and likewise of the annual charges and liabilities thereof, so that it may appear to the court what the surplus income thereof now is, and what such surplus income would be were the said estates all brought into use and rendered productive?

15. What the amount was of personal estate received by the mayor, aldermen, and citizens of Philadelphia under the residuary bequest contained in the said will, and in what manner was so much of
31 the said personal estate invested as came to their hands invested by the testator? And in what manner was so much of the said personal estate invested by themselves, as came to their

hands in cash, and what amount thereof was received by the said devisees in cash; and what was the whole amount paid, by them, to other devisees, under the will, and to creditors; and if there was filed in the office of the register of wills an inventory and appraisement and one or more supplementary inventories and appraisements of the personalty of the testator, the defendants are required to annex copies of same to this interrogatory, and they are also required to say whether any other personalty was left by the testator than that which appears by the said inventory or inventories? They are also required to annex hereto copies of the accounts as settled with the mayor, aldermen, and citizens of Philadelphia, by the executors of Mr. Girard, and by the trustees or assignees of the said banking house, going to show the debits and credits against and in favor of the said mayor, aldermen, and citizens of Philadelphia, as allowed in the settlement of the estate of the testator, whether said settlements were settlements made with the said mayor, aldermen, and citizens of Philadelphia, or otherwise, in due course of law and administration of the estate of the testator. And the defendants are further required to set forth what amounts were received, and when, by the said mayor, aldermen, and citizens of Philadelphia, from that part of the testator's estate comprised in his bank and the business of his
32 bank, whether as assets thereof, capital, credits, or otherwise.

16. What was the amount expended in building the said college, and what was the amount after the said building was finished that was expended in fitting and furnishing the same, before it was opened for the reception of the youths nurtured and educated there?

17. What amount, and whence derived, other than from the said two millions of dollars, and from income of the real estate of the testator in the city and county of Philadelphia, and from dividends of his Schuylkill Navigation stock, has been applied to the purposes of the said college for orphans?

18. What was the amount received by the mayor, aldermen, and citizens of Philadelphia, as their portion of the purchase money, under proceedings in partition of certain four thousand acres of land in the counties of Schuylkill and Columbia, or one of those counties, and when was it received, and how invested, or on what objects, and when expended? The defendants are required to append to their answer to this interrogatory copies of so much of the docket entries of the said proceedings in partition, as will serve to show the names of the parties to the said partition, the names of the counsel who therein appeared, the term and number of the action or actions, and the court or courts wherein the same was or were brought.

19. What amounts were received, and at what time or times,
33 by the said residuary legatees, as the proceeds of sales of the said lands of the testator situate in Kentucky, and how have such amounts been invested or appropriated?

20. What entries not of the dates of 7 January, 1854, and of 19 January, 1854, are contained in the journals of the select and common councils, of the mayor, aldermen, and citizens of Philadelphia, of and concerning the proposal to consolidate into one the various municipal

bodies of the county of Philadelphia? The defendants are required to annex copies of such entries to their answer to this interrogatory.

21. When and to what amount, and in what manner, has income of the testator's estate been at any time invested by the mayor, aldermen, and citizens of Philadelphia, or by these defendants, and of such investments what are there which now exist?

22. What investments in public stocks, loans, mortgages, or otherwise, have been made since the death of the testator, of the income or capital of the said estate?

23. What was the sum of income, and what the sum of capital, expended upon the buildings erected since the testator's death upon the testator's lot or square of ground lying between Market street and Chesnut street, and Eleventh street and Twelfth street, in the city of Philadelphia? And at what dates and in what amounts severally and respectively were such sums of capital and income so applied and expended?

34 24. What sum or sums, and at what dates since the testator's death, have been appropriated to buildings, (the college for orphans and the buildings mentioned in the last preceding interrogatory not included,) which have been erected upon the testator's real estate, and what sum or sums have been appropriated, and at what dates, to improvements of buildings already thereon erected at the time of his death?

25. What was the total amount expended by the defendants upon the said college, during the last year, including every expense whatever? The defendants are required to annex to their answer to this interrogatory, an account containing items in full, with dates, and all particulars necessary to the understanding of such expenditure, both in the general and detail and the merits thereof.

26. Did the mayor, aldermen, and citizens of Philadelphia set apart and when, and always keep so set apart, certain cash and public loans, stock, and other securities, to the amount of two millions of dollars, for the purpose of erecting and maintaining said college? The defendants are required to append to the answer to this interrogatory a list or account showing each item of cash or securities so set aside, and the amount thereof. And if the said cash and securities did not suffice out of the capital and income thereof to meet the annual charges incurred, in building or otherwise, the defendants

35 are required to set forth what additional items of securities have been set apart to the use of the college from time to time.

27. What sum or sums, portion of the residuary estate of Mr. Girard, and at what dates, have been expended, omitting those expended on the college by the mayor, aldermen, and citizens of Philadelphia, and by these defendants, on improvements of real estate or other property outside of the corporate limits, which were of the mayor, aldermen, and citizens of Philadelphia? and what sum or sums, portion of the said residuary estate, and at what dates, have been expended, omitting those expended on the college by the mayor, aldermen, and citizens of Philadelphia, and by these defendants, on improvements of real estate or other property, not part of the said residuary estate,

outside of the corporate limits, which were of the mayor, aldermen, and citizens of Philadelphia?

28. To what uses are put for profit or revenue the said five hundred and sixty-seven acres of farm land in the late districts of Passyunk and Moyamensing, and what annual profit and revenue is thence derived?

29. Whether any alteration or alterations of the charter of the said mayor, aldermen, and citizens of Philadelphia, or of the said city of Philadelphia, from the time when the said first mentioned corporation was established to this day, has or have been made against
36 the remonstance of the said corporation? And if in answer to this interrogatory it be said that alterations of the said charter have been so made against the remonstrance of the said corporations, the said defendants are further required to state in what instance or instances, and at what date or dates, and what such alterations were, and to append to their answer to this interrogatory copies of such remonstrances or remonstrance, and so show in what manner the will of the said corporations to the contrary of such alteratiens of such charter was manifested.

And that the said defendants and their confederates, when discovered, may answer the premises, and that they may produce and leave in the hands of such persen as the court shall direct all deeds and writings in their custody or power, or in the custody or power of any person or persons, for their use, pertaining to the title and estate of the said Stephen Girard in the said messuages, lands, and chattles. And that an account may be taken by and under the direction and decree of the court, of the lands, tenements, and personalty, and of all the estate and effects of the said Stephen Girard, now or heretofore possessed by the said defendants, or come to their hands, or to the hands of any other person or persons, by their order or for their use.

And that the court will order and decree an inquiry by the master, or such other person as they may think proper, to ascertain, after the wants are supplied, and all allowances made and provided for enlarging and increasing the establishment of the said college, and for all its necessities whatever, and after setting aside the said sum of five hundred thousand dollars, in order to provide thirty thousand dollars a year for the improvements of Delaware avenue and Water street, and pulling down and removing wooden buildings, and ten thousand dollars in order to provide six hundred dollars a year to buy fuel for poor house and room keepers, and after the cost of repairs, agency, and taxes of real estate, and all other charges whatsoever against the entire estate, real and personal, of the testator, applicable to the said college, has been allowed and provided for, whether there does not remain out of the annual income of the estate of the testator, and which is payable, and ought to be and to have been paid to your orators as heirs at law of the testator, a large sum of money? And that the court, such inquiry having been made, will order and decree the surplus beyond the wants of the college, and the proceeds of the said two several investments of five hundred thousand dollars and ten

thousand dollars, and the cost of keeping the said real and personal estate and agency, and other lawful charges attending the same, to be paid annually to your orators.

And that the court, if necessary to the due and equitable division of the proceeds of the said present income of the said estate
37 applicable to the said college, between the defendants and your orators, and to your orators receiving their due surplus thereof, as forementioned, will order and decree that the said estates do pass into the possession and keeping of a receiver, to be appointed for the purpose.

And that the court will order and decree an inquiry by the master, or such other person as they may think proper, into the gross value, and also the present capacity for annual yield of the said lands of the testator, in the city of Philadelphia and elsewhere, not now yielding income or profit, and especially the said twenty-nine thousand four hundred and thirty-two acres of land in the counties of Schuylkill and Columbia, containing mines of anthracite coal; and should it be the result of such inquiry that the gross value and capacity for annual yield of the said lands is such as to show and prove the capacity of the said estate for affording income beside and beyond the said wants of the college, and the cost of keeping of the said real and personal estate, and the agency and other lawful charges attending the same, to immensely exceed the wants of the college, and the annual expenses of the said real and personal estate, that the court in that case, if they should be of the opinion that the whole residuary estate is applicable to the said college, will direct, order, and decree, to be transferred to your orators of the realty in fee-simple and of personalty absolutely, such surplus so found to exist beyond and beside all possible and lawful wants of the said college, and the amount properly applicable to the expenses attending the keeping and management of that part of the said real and personal estate of the testator which may be ordered and decreed to remain in the hands of these defendants.

And that the court will order and decree, if they should not be of opinion the whole residuary estate is applicable to the said college, that of all such estates real and personal not applicable to the said college, the plaintiffs' ratable shares as heirs-at-law of the testator be to them presently conveyed and duly made over free of all claim thereto by these defendants.

And that the court will order and decree by the master, or such other authority as they think proper, an inquiry into the expenditures hitherto made, and expenses incurred of whatever kind, by the mayor, aldermen, and citizens of Philadelphia, and by these defendants, in the improvements, repairs, agencies, taxes paid, and other costs and expenses, and debits generally of the real estate; and also of the sums charged to the debit of personalty, in order to the ascertainment and settling of the due portion of the said realty and personalty to be set off in the manner aforementioned to your orators.

And that the court would be pleased to ascertain the respective rights of the parties, plaintiffs and defendants, in the premises, and

make such orders and decrees therein as to the court may seem meet; and that the court would be pleased to grant to your orators such further and other relief in the premises as may seem meet and proper, and their writ of subpœna directed to the said defendants, commanding them, by a certain day and on a certain pain, to be and appear before this court, and then and there to answer all and singular the premises; and further to stand to perform and abide such further order, direction, and decree therein as to the court shall seem most meet; and also their writ of injunction to be directed to the said defendants.

And your orators will ever pray, etc.

C. INGERSOLL, *for the Compl'ts.*

NOTE.—The defendants are required to answer, severally, interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.

C. INGERSOLL, *for the Complainants.*

38 *Exhibit A.*

I, Stephen Girard, of the city of Philadelphia, in the Commonwealth of Pennsylvania, mariner and merchant, being of sound mind, memory, and understanding, do make and publish this my last will and testament in manner following, that is to say:

I. I give and bequeath unto "the contributors to the Pennsylvania Hospital," of which corporation I am a member, the sum of thirty thousand dollars, upon the following conditions, namely, that the said sum shall be added to their capital, and shall remain a part thereof forever, to be placed at interest, and the interest thereof to be applied, in the first place, to pay to my black woman Hannah (to whom I hereby give her freedom) the sum of two hundred dollars per year, in quarterly payments of fifty dollars each in advance, during all the term of her life; and, in the second place, the said interest to be applied to the use and accommodation of the sick in the said hospital, and for providing, and at all times having competent matrons, and a sufficient number of nurses and assistant nurses, in order not only to promote the purposes of the said hospital, but to increase this last class of useful persons much wanted in our city.

II. I give and bequeath to "the Pennsylvania Institution for the Deaf and Dumb" the sum of twenty thousand dollars, for the use of that institution.

III. I give and bequeath to "the Orphan Asylum of Philadelphia," the sum of ten thousand dollars, for the use of that institution.

IV. I give and bequeath to "the comptrollers of the public
39 schools for the city and county of Philadelphia" the sum of ten thousand dollars, for the use of the schools upon the Lancaster system, in the first section of the first school district of Pennsylvania.

V. I give and bequeath to "the mayor, aldermen, and citizens of Philadelphia" the sum of ten thousand dollars, in trust safely to invest the same in some productive fund, and with the interest and dividends arising therefrom to purchase fuel between the months of

March and August in every year forever, and in the month of January in every year forever distribute the same amongst poor white housekeepers and room-keepers of good character residing in the city of Philadelphia.

VI. I give and bequeath to the society for the relief of poor and distressed masters of ships, their widows and children, (of which society I am a member,) the sum of ten thousand dollars to be added to their capital stock, for the uses and purposes of said society.

VII. I give and bequeath to the gentlemen who shall be trustees of the Masonic loan, at the time of my decease, the sum of twenty thousand dollars, including therein ten thousand and nine hundred dollars due to me, part of the Masonic loan, and any interest that may be due thereon at the time of my decease, in trust for the use and benefit of "the Grand Lodge of Pennsylvania, and Masonic Jurisdiction thereto belonging," and to be paid over by the said trustees to the said grand lodge, for the purpose of being
40 invested in some safe stock or funds, or other good security, and the dividends and interest arising therefrom to be again so invested and added to the capital, without applying any part thereof to any other purpose, until the whole capital shall amount to thirty thousand dollars, when the same shall forever after remain a permanent fund or capital of the said amount of thirty thousand dollars, the interest whereof shall be applied from time to time to the relief of poor and respectable brethren; and in order that the real and benevolent purposes of Masonic institutions may be attained, I recommend to the several lodges not to admit to membership, or to receive members from other lodges, unless the applicants shall absolutely be men of sound and good morals.

VIII. I give and bequeath unto Philip Peltz, John Lentz, Francis Hesley, Jacob Baker, and Adam Young, of Passyunk township, in the county of Philadelphia, the sum of six thousand dollars, in trust, that they, or the survivors or survivor of them, shall purchase a suitable piece of ground, as near as may be in the centre of said township, and thereon erect a substantial brick building, sufficiently large for a school-house and the residence of a school-master, one part thereof for poor male white children, and the other part for poor female white children of said township; and as soon as the said school-house shall have been built, that they, the said trustees, or the survivors or survivor of them, shall convey the said piece of ground and house thereon erected, and shall pay over such balance of said sum
41 as may remain unexpended to any board of directors, and their successors in trust, which may at the time exist or be, by law, constituted, consisting of at least twelve discreet inhabitants of the said township, and to be annually chosen by the inhabitants thereof; the said piece of ground and house to be carefully maintained by the said directors and their successors solely for the purposes of a school as aforesaid forever, and the said balance to be securely invested as a permanent fund, the interest thereof to be applied from time to time towards the education in the said school of any number of such poor white children of said township; and I do hereby re-

commend to the citizens of said township to make additions to the fund whereof I have laid the foundation.

IX. I give and devise my house and lot of ground thereto belonging, situate in Rue Ramouet aux Chartrons, near the city of Bordeaux, in France, and the rents, issues, and the profits thereof, to my brother, Etienne Girard, and my niece, Victoire Fenellon, (daughter of my late sister, Sophia Girard Capayron, both residing in France,) in equal moieties for the life of my said brother; and, on his decease, one moiety of the said house and lot to my said niece Victoire and her heirs forever, and the other moiety to the six children of my said brother, namely, John Fabricius, Marguerite, Ann Henriette, Jean August, Marie and Madelaine Henriette, share
42 and share alike, (the issue of any deceased child, if more than one, to take amongst them the parent's share,) and their heirs forever.

X. I give and bequeath to my said brother, Etienne Girard, the sum of five thousand dollars, and the like sum of five thousand dollars to each of his six children above named. If any of the said children shall die prior to the receipt of his or her legacy of five thousand dollars, the said sum shall be paid; and I give and bequeath the same to any issue of such deceased child, if more than one, share and share alike.

XI. I give and bequeath to my said niece, Victoire Feneilon, the sum of five thousand dollars.

XII. I give and bequeath absolutely to my niece Antoinetta, now married to Mr. Hemphill, the sum of ten thousand dollars; and I also give and bequeath to her the sum of fifty thousand dollars, to be paid over to a trustee or trustees to be appointed by my executors, which trustee or trustees shall place and continue the said sum of fifty thousand dollars upon good security, and pay the interest and dividends thereof, as they shall from time to time accrue, to my said niece for her separate use during the term of her life; and from and immediately after her decease to pay and distribute the capital to and among such of her children and the issue of deceased children, and in such parts and shares as she, the said Antoinetta, by any instrument under her hand and seal, executed in the presence of at least two credible witnesses, shall direct and appoint; and for default of such appointment, then to and among the said children and issue of deceased children, in equal shares; such issue of deceased children, if more than one, to take only the share which their
43 deceased parent would have taken if living.

XIII. I give and bequeath unto my niece Carolina, now married to Mr. Haslam, the sum of ten thousand dollars, to be paid over to a trustee or trustees to be appointed by my executors, which trustee or trustees shall place and continue the said money upon good security, and pay the interest and dividends thereof from time to time, as they shall accrue, to my said niece, for her separate use during the term of her life; and from and immediately after her decease to pay and distribute the capital to and among such of her children and issue of deceased children, and in such parts and shares

as she, the said Carolina, by any instrument under her hand and seal, executed in the presence of at least two credible witnesses, shall direct and appoint; and for default of such appointment, then to and among the said children and issue of deceased children, in equal shares; such issue of deceased children, if more than one, to take only the share which the deceased parent would have taken if living; but if my said niece Carolina shall leave no issue, then the said trustee or trustees, on her decease, shall pay the said capital, and any interest accrued thereon, to and among Caroline Lallermand (niece of the said Carolina) and the children of the aforesaid Antoinetta Hemphill, share and share alike.

XIV. I give and bequeath to my niece Henrietta, now married to Dr. Clark, the sum of ten thousand dollars; and I give and bequeath to her daughter Caroline (in the last clause above named) the sum of twenty thousand dollars—the interest of the said sum of
44 twenty thousand dollars, or so much thereof as may be necessary to be applied to the maintenance and education of the said Caroline during her minority—and the principal, with any accumulated interest, to be paid to the said Caroline on her arrival at the age of twenty-one years.

XV. Unto each of the captains who shall be in my employment at the time of my decease, either in port or at sea, having charge of one of my ships or vessels, and having performed at least two voyages in my service, I give and bequeath the sum of fifteen hundred dollars; provided he shall have brought safely into the port of Philadelphia, or, if at sea at the time of my decease, shall bring safely into that port, my ship or vessel last entrusted to him, and also that his conduct during the last voyage shall have been in every respect conformable to my instructions to him.

XVI. All persons who, at the time of my decease, shall be bound to me by indenture, as apprentices or servants, and who shall then be under age, I direct my executors to assign to suitable masters immediately after my decease, for the remainder of their respective terms, on conditions as favorable as they can in regard to education, clothing, and freedom dues. To each of the said persons in my service, and under age at the time of my decease, I give and bequeath the sum of five hundred dollars, which sums, respectively, I direct my executors safely to invest in public stock, to apply the interest and dividends thereof towards the education of the several apprentices or servants, for whom the capital is given, respect-
45 ively; and at the termination of the apprenticeship or service of each, to pay to him or her the said sum of five hundred dollars, and any interest accrued thereon, if any such interest shall remain unexpended. In assigning any indenture, preference shall be given to the mother, father, or next relation, as assignee, should such mother, father, or relative desire it, and be at the same time respectable and competent.

XVII. I give and bequeath to Francis Hesley (son of Mrs. S. Hesley, who is mother of Marianne Hesley) the sum of one thousand dollars, over and above such sum as may be due to him at my decease.

XVIII. I charge my real estate in the State of Pennsylvania wi the payment of the several annuities or sums following, (the said a nuities to be paid by the treasurer or other proper officer of the cit of Philadelphia, appointed by the corporation thereof for the purpose, out of the rents and profits of said real estate hereinafter directed to be kept constantly rented,) namely:

1st. I give and bequeath to Mrs. Elizabeth Ingersoll, widow of Jared Ingersoll, esq., late of the city of Philadelphia, counsellor at law, an annuity or yearly sum of one thousand dollars, to be paid in half-yearly payments, in advance, of five hundred dollars each, during her life.

2d. I give and bequeath to Mrs. Catharine Girard, now widow o Mr. J. B. Haskins, who died in the Isle of France, an annuity o yearly sum of four hundred dollars, to be paid in half-yearly pay ments, in advance, of two hundred dollars each, during her life.

3d. I give and bequeath to Mrs. Jane Taylor, my presen
46 housekeeper, (the widow of the late Captain Alexander Tay lor, who was master of my ship Helvetius, and died in n employment,) an annuity or yearly sum of five hundred dollars, to l paid in half-yearly payments, in advance, of two hundred and fif dollars each, during her life.

4th. I give and bequeath to Mrs. S. Hesley. my housekeeper my place in Passyunk township, an annuity or yearly sum of fi hundred dollars, to be paid in half-yearly payments, in advance, two hundred and fifty dollars each, during her life.

5th. I give and bequeath to Marianne Hesley, daughter of Mrs. S Hesley, an annuity or yearly sum of three hundred dollars, to b paid to her mother for her use in half-yearly payments, in advance, of one hundred and fifty dollars each, until the said Marianne shall have attained the age of twenty-one years, when the said annuity shall cease, and the said Marianne will receive the five hundred dollars given to her and other indented persons, according to clause XV of this will.

6th. I give and bequeath to my late housekeeper, Mary Kenton, an annuity or early sum of three hundred dollars, to be paid in half-yearly payments, in advance, of one hundred and fifty dollars each, during her life.

7th. I give and bequeath to Mrs. Deborah Scott, sister of Mary Kenton, and wife of Mr. Edwin T. Scott, an annuity or yearly sum of three hundred dollars, to be paid in half-yearly payments, in advance, of one hundred and fifty dollars each, during her life.

47 8th. I give and bequeath to Mrs. Catharine M'Laren, sister of Mary Kenton, and wife of Mr. M. M'Laren, an annuity or yearly sum of three hundred dollars, to be paid in half-yearly payments, in advance, of one hundred and fifty dollars each, during her life.

9th. I give and bequeath to Mrs. Amelia G. Taylor, wife of Mr. Richard M. Taylor, an annuity or yearly sum of three hundred dollars, to be paid in half-yearly payments in advance, of one hundred and fifty dollars each, during her life.

XIX. All that part of my real and personal estate, near Washita, in the State of Louisiana, the said real estate consisting of upwards of two hundred and eight thousand arpens, or acres, of land, and including therein the settlement hereinafter mentioned, I give, devise, and bequeath, as follows, namely: 1. I give, devise, and bequeath to the corporation of the city of New Orleans, their successors and assigns, all that part of my real estate constituting the settlement formed on my behalf by my particular friend Judge Henry Bree, of Washita, consisting of upwards of one thousand arpens, or acres, of land, with the appurtenances and improvements thereon, and also all the personal estate thereto belonging, and thereon remaining, including upwards of thirty slaves now on said settlement, and their increase, in trust, however, and subject to the following reservations:

I desire that no part of the said estate or property, or the slaves thereon, or their increase, shall be disposed of or sold for the term of twenty years from and after my decease, should the said
48 Judge Henry Bree survive me and live so long, but that the said settlement shall be kept up by the said Judge Henry Bree, for and during said term of twenty years, as if it was his own; that is, it shall remain under his sole care and control; he shall improve the same by raising such produce as he may deem most advisable, and after paying taxes, and all expenses in keeping up the settlement, by clothing the slaves and otherwise, he shall have and enjoy for his own use all the net profits of said settlement, provided, however, and I desire, that the said Judge Henry Bree shall render annually to the corporation of the city of New Orleans a report of the state of the settlement, the income and expenditure thereof, the number and increase of the slaves, and the net result of the whole.

I desire that at the expiration of the said term of twenty years, or on the decease of the said Judge Henry Bree, should he not live so long, the land and improvements forming said settlement, the slaves thereon, or thereto belonging, and all other appurtenant personal property shall be sold, as soon as the said corporation shall deem it advisable to do so, and the proceeds of the said sale or sales shall be applied by the said corporation to such uses and purposes as they shall consider most likely to promote the health and general prosperity of the inhabitants of the city of New Orleans. But, until the said sale shall be made, the said corporation shall pay all taxes, prevent waste or intrusion, and so manage the said settlement
49 and the slaves and their increase thereon as to derive an income, and the said income shall be applied from time to time to the same uses and purposes, for the health and general prosperity of the said inhabitants.

2. I give and devise, bequeath to the mayor, aldermen, and citizens of Philadelphia, their successors and assigns, two undivided third parts of all the rest and residue of my said real estate, being the lands unimproved near Washita, in the said State of Louisiana, in trust, that, in common with the corporation of the city of New Orleans, they shall pay the taxes on the said lands, and preserve

them from waste or intrusion, for the term of ten years from and after my decease, and, at the end of the said term, when they shall deem it advisable to do so, shall sell and dispose of their interest in said lands gradually from time to time, and apply the proceeds of such sales to the same uses and purposes hereinafter declared and directed, of and concerning the residue of my personal estate.

3. And I give, devise, and bequeath to the corporation of the city of New Orleans, their successors and assigns, the remaining one undivided third part of the said lands, in trust in common with the mayor, aldermen, and citizens of Philadelphia, to pay the taxes on the said lands, and preserve them from waste and intrusion, for the term of ten years from and after my decease, and, at the end of the said term, when they shall deem it advisable to do so, to sell and dispose of their interest in said lands gradually from time to time, and to apply the proceeds of such sales to such uses and purposes as
50 the said corporation may consider most likely to promote the health and general prosperity of the inhabitants of the city of New Orleans.

XX. And whereas, I have been for a long time impressed with the importance of educating the poor, and of placing them by the early cultivation of their minds and the development of their moral principles, above the many temptations to which, through poverty and ignorance, they are exposed; and I am particularly desirous to provide for such a number of poor male white orphan children as can be trained in one institution, a better education, as well as a more comfortable maintenance, than they usually receive from the application of the public funds: and whereas, together with the object just adverted to, I have sincerely at heart the welfare of the city of Philadelphia, and as a part of it, am desirous to improve the neighborhood of the river Delaware, so that the health of the citizens may be promoted and preserved, and that the eastern part of the city may be made to correspond better with the interior: Now, I do give, devise, and bequeath all the residue and remainder of my real and personal estate, of every sort and kind wheresoever situate, (the real estate in Pennsylvania charged as aforesaid,) unto "the mayor, aldermen, and citizens of Philadelphia," their successors and assigns, in trust, to and for the several uses, intents, and purposes hereinafter mentioned and declared of and concerning the same, that is to say: so far as regards my real estate in Pennsylvania, in trust, that no part thereof shall ever be sold or alienated by the said the
51 mayor, aldermen, and citizens of Philadelphia, or their successors, but the same shall forever thereafter be let from time to time to good tenants, at yearly, or other rents, and upon leases in possession not exceeding five years from the commencement thereof, and that the rents, issues, and profits arising therefrom shall be applied towards keeping that part of the said real estate situate in the city and liberties of Philadelphia constantly in good repair, (parts elsewhere situate to be kept in repair by the tenants thereof respectively,) and towards improving the same, whenever necessary, by erecting new buildings, and that the net residue (after paying the

several annuities hereinbefore provided for) be applied to the same uses and purposes as are herein declared of and concerning the residue of my personal estate: and so far as regards my real estate in Kentucky, now under the care of Messrs. Triplett and Burmley, in trust, to sell and dispose of the same whenever it may be expedient to do so, and to apply the proceeds of such sale to the same uses and purposes as are herein declared of and concerning the residue of my personal estate.

XXI. And so far as regards the residue of my personal estate, in trust, as to two millions of dollars, part thereof to apply and expend so much of that sum as may be necessary, in erecting, as soon as practicably may be, in the centre of my square of ground between High and Chesnut streets, and Eleventh and Twelfth streets,
52 in the city of Philadelphia, (which square of ground I hereby devote for the purposes hereinafter stated, and for no other, forever,) a permanent college, with suitable out-buildings, sufficiently spacious for the residence and accommodation of at least three hundred scholars, and the requisite teachers and other persons necessary in such an institution as I direct to be established; and in supplying the said college and out-buildings with decent and suitable furniture, as well as books and all things needful to carry into effect my general design.

The said college shall be constructed with the most durable materials and in the most permanent manner, avoiding needless ornament, and attending chiefly to the strength, convenience, and neatness of the whole. It shall be at least one hundred and ten feet east and west, and one hundred and sixty feet north and south, and shall be built on lines parallel with High and Chesnut streets and Eleventh and Twelfth streets, provided those lines shall constitute at their junction right angles. It shall be three stories in height, each story at least fifteen feet high in the clear from the floor to the cornice. It shall be fire-proof inside and outside. The floors and the roof to be formed of solid materials, on arches turned on proper centres, so that no wood may be used except for doors, windows, and shutters. Cellars shall be made under the whole building solely for the purposes of the institution; the doors to them from the outside shall be on the east and west of the building, and access to them from the inside shall be had by steps descending to the cellar floor from each of the
53 entries or halls hereinafter mentioned, and the inside cellar-doors to open under the stairs on the northeast and northwest corners of the northern entry, and under the stairs on the southeast and southwest corners of the southern entry; there should be a cellar window under and in a line with each window in the first story; they should be built one-half below the other half above the surface of the ground, and the ground outside each window should be supported by stout walls; the sashes should open inside, on hinges like doors, and there should be strong iron bars outside each window; the windows inside and outside should not be less than four feet wide in the clear. There shall be in each story four rooms, each room not less than fifty feet square in the clear; the four rooms on each floor

to occupy the whole space east and west on such floor or story, and the middle of the building north and south, so that in the north of the building and in the south thereof there may remain a space of equal dimensions for an entry or hall in each for stairs and landings. In the northeast and in the northwest corners of the northern entry or hall on the first floor, stairs shall be made so as to form a double staircase, which shall be carried up through the several stories; and in like manner in the southeast and southwest corners of the southern entry or hall, stairs shall be made on the first floor, so as to form a double staircase, to be carried up through the several stories; the steps of the stairs to be made of smooth white marble, with
54 plain square edges, each step not to exceed nine inches in the rise, nor to be less than ten inches in the tread; the outside and inside foundation walls shall be at least ten feet high in the clear from the ground to the ceiling; the first floor shall be at least three feet above the level of the ground around the building, after that ground shall have been so regulated as that there shall be a gradual descent from the centre to the sides of the square formed by High and Chesnut and Eleventh and Twelfth streets; all the outside foundation walls forming the cellars shall be three feet six inches thick up to the first floor, or as high as may be necessary to fix the centres for the first floor; and the inside foundation wall, running north and south, and the three inside foundation walls, running east and west, (intended to receive the interior walls for the four rooms, each not less than fifty feet square in the clear, above mentioned,) shall be three feet thick up to the first floor, or as high as may be necessary to fix the centres for the first floor when carried so far up, the outside walls shall be reduced to two feet in thickness, leaving a recess outside of one foot and inside of six inches, and when carried so far up the inside foundation walls shall also be reduced six inches on each side to the thickness of two feet; centres shall then be fixed on the various recesses of six inches throughout, left for the purpose, the proper arches shall be turned and the first floor laid; the outside and the inside walls shall then be carried up of the thickness of
55 two feet throughout, as high as may be necessary to begin the recess intended to fix the centres for the second floor—that is, the floor for the four rooms, each not less than fifty feet square in the clear, and for the landing in the north and the landing in the south of the building, where the stairs are to go up at this stage of the work, a chain, composed of bars of inch square iron, each bar about ten feet long, and linked together by hooks formed of the ends of the bars, shall be laid straightly and horizontally along the several walls, and shall be as tightly as possible worked into the centre of them throughout, and shall be secured wherever necessary, especially at all the angles, by iron clamps solidly fastened, so as to prevent cracking or swerving in any part; centres shall then be laid, the proper arches turned for the second floor and landings, and the second floor and landings shall be laid; the outside and the inside walls shall then be carried up of the same thickness of two feet throughout, as high as may be necessary to begin in the recess intended to

fix the centres for the third floor and landings, and when so far carried up another chain similar in all respects to that used at the second story shall be in like manner worked into the walls throughout as tightly as possible and clamped in the same way with equal care;
56 centres shall be formed, the proper arches turned, and the third floor and landings shall be laid; the outside and inside walls shall then be carried up of the same thickness of two feet throughout, as high as may be necessary to begin the recess intended to fix the centres for the roof, and when so carried up, a third chain, in all respects like those used at the second and third stories, shall, in the manner before described, be worked as tightly as possible into the walls throughout, and shall be clamped with equal care; centres shall now be fixed in the manner best adapted for the roof, which is to form the ceiling for the third story, the proper arches shall be turned and the roof shall be laid horizontally as may be consistently with the easy passage of water to the eaves; the outside walls, still of the thickness of two feet throughout, shall then be carried up about two feet above the level of the platform, and shall have marble capping, with a strong and neat iron railing thereon. The outside walls shall be faced with slabs or blocks of marble or granite, not less than two feet thick and fastened together with clamps securely sunk therein; they shall be carried up flush from the recess of one foot formed at the first floor where the foundation outside wall is reduced to two feet. The floors and landings, as well as the roof, shall be covered with marble slabs securely laid in mortar, the slabs on the roof to be twice as thick as those on the floors. In constructing the walls as well as in turning the arches and laying
57 the floors, landings, and roof, good and strong mortar and grout shall be used, so that no cavity whatever may anywhere remain.

A furnace or furnaces for the generation of heated air shall be placed in the cellar, and the heated air shall be introduced in adequate quantity whenever wanted, by means of pipes and flues inserted and made for the purpose in the walls, and as those walls shall be constructed. In case it shall be found expedient for the purposes of a library, or otherwise, to increase the number of rooms, by dividing any of those directed to be not less than fifty feet square in the clear, into parts, the partition walls to be of solid materials. A room most suitable for the purpose shall be set apart for the reception and preservation of my books and papers, and I direct that they shall be placed there by my executors, and carefully preserved therein. There shall be two principal doors of entrance into the college, one into the entry or hall on the first floor, in the north of the building, and in the centre between the east and west walls; the other into the entry or hall in the south of the building, and in the centre between the east and west walls; the dimensions to be determined by a due regard to the size of the entire building, to that of the entry, and to the purposes of the doors. The necessity for, as well as the position and size of, other doors, internal or external, and also the position and size of the windows to be in like manner decided on by

a consideration of the uses to which the building is to be ap-
58 plied, the size of the building itself, and of the several rooms,
and of the advantages of *of* light and air; there should, in each instance, be double doors, those opening into the rooms to be what are termed glass doors, so as to increase the quantity of light for each room, and those opening outward to be of substantial wood work, well lined and secured; the windows of the second and third stories I recommend to be made in the style of those in the first and second stories of my present dwelling-house, north Water street, on the eastern front thereof; and outside each window I recommend that a substantial and neat iron balcony be placed sufficiently wide to admit the opening of the shutters against the walls; the windows of the lower story to be in the same style, except that they are not to descend to the floor, but so far as the surbase, up to which the wall is to be carried, as is the case in the lower story of my house at my place in Passyunk township. In minute particulars, not here noticed, utility and good taste should determine. There should be at least four out-buildings, detached from the main edifice and from each other, and in such positions as shall at once answer the purposes of the institution, and be consistent with the symmetry of the whole establishment; each building should be, as far as practicable, devoted to a distinct purpose; in that one or more of those buildings in which
they may be most useful I direct my executors to place my
59 plate and furniture of every sort.

The entire square, formed by High and Chesnut streets, and Eleventh and Twelfth streets, shall be enclosed with a solid wall, at least fourteen inches think, and ten feet high, capped with marble, and guarded with irons on the top, so as to prevent persons from getting over; there shall be two places of entrance into the square, one in the centre of the wall facing High street, and the other in the centre of the wall facing Chesnut street; at each place of entrance there shall be two gates, one opening inward, and the other outward; those opening inward to be of iron and in the style of the gates north and south of my banking house; and those opening outward to be of substantial wood work, well lined and secured on the faces thereof with sheet iron. The messuages now erected on the southeast corner of High and Twelfth streets, and on Twelfth street, to be taken down and removed as soon as the college and out-building shall have been erected, so that the establishment may be rendered secure and private.

When the college and appurtenances shall have been constructed and supplied with plain and suitable furniture and books, philosophical and experimental instruments and apparatus, and all other matters needful to carry my general design into execution, the income, issues, and profits of so much of the said sum of two millions of dollars as shall remain unexpended shall be applied to maintain
60 the said college according to my directions.

1. The institution shall be organized as soon as practicable, and to accomplish that purpose more effectually, due public notice of the intended opening of the college shall be given, so that there may

be an opportunity to make selections of competent instructors and other agents, and those who may have the charge of orphans may be aware of the provisions intended for them.

2. A competent number of instructors, teachers, assistants, and other necessary agents shall be selected, and when needful, their places from time to time supplied; they shall receive adequate compensation for their services; but no person shall be employed who shall not be of tried skill in his or her proper department, of established moral character, and in all cases persons shall be chosen on account of their merit, and not through favor or intrigue.

3. As many poor white male orphans, between the ages of six and ten years, as the said income shall be adequate to maintain, shall be introduced into the college as soon as possible; and from time to time, as there may be vacancies, or as increased ability from income may warrant, others shall be introduced.

4. On the application for admission, an accurate statement should be taken in a book prepared for the purpose, of the name, birth place, age, health, condition as to relatives, and other particulars useful to be known of each orphan.

5. No orphan should be admitted until the guardians or directors of the poor, or a proper guardian or other competent authority,
61 shall have given, by indenture, relinquishment, or otherwise, adequate power to the mayor, aldermen, and citizens of Philadelphia, or to directors or others by them appointed, to enforce, in relation to each orphan, every proper restraint, and to prevent relatives or others from interfering with or withdrawing such orphan from the institution.

6. Those orphans, for whose admission application shall first be made, shall be first introduced, all other things concurring; and at all future times priority of application shall entitle the applicant to preference in admission, all other things concurring; but if there shall be at any time more applicants than vacancies, and the applying orphans shall have been born in different places, a preference shall be given, first, to orphans born in the city of Philadelphia; secondly, to those born in any other part of Pennsylvania; thirdly, to those born in the city of New York, (that being the first port on the continent of North America at which I arrived,) and lastly, to those born in the city of New Orleans, being the first port on the said continent at which I first traded, in the first instance as first officer, and subsequently as master and part owner of a vessel and cargo.

7. The orphans admitted into the college shall be there fed with plain but wholesome food, clothed with plain but decent apparel, (no distinctive dress ever to be worn,) and lodged in a plain but safe manner. Due regard shall be paid to their health, and to this
62 end their persons and clothes shall be kept clean, and they shall have suitable and rational exercise and recreation.

They shall be instructed in the various branches of a sound education, comprehending reading, writing, grammar, arithmetic, geography, navigation, surveying, practical mathematics, astronomy, natural, chemical, and experimental philosophy, the French and

Spanish languages, (I do not forbid, but I do not recommend, the Greek and Latin languages,) and such other learning and science as the capacities of the several scholars may merit or warrant. I would have them taught facts and things rather than words or signs, and especially I desire that by every proper means a pure attachment to our republican institutions, and to the sacred rights of conscience, as guaranteed by our happy constitutions, shall be formed and fostered in the minds of the scholars.

8. Should it unfortunately happen that any of the orphans admitted into the college shall, from malconduct, have become unfit companions for the rest, and mild means of reformation prove abortive, they should no longer remain therein.

9. Those scholars who shall merit it shall remain in the college until they shall respectively arrive at between fourteen and eighteen years of age. They shall then be bound out by the mayor, aldermen, and citizens of Philadelphia, or under their direction, to suitable occupations, as those of agriculture, navigation, arts, mechanical trades, and manufactures, according to the capacities and acquirements of the scholars respectively, consulting, as far as prudence shall justify it, the inclinations of the several scholars as to the occupation,
63 art, or trade to be learned.

In relation to the organization of the college and its appendages, I leave, necessarily, many details to the mayor, aldermen, and citizens of Philadelphia, and their successors; and I do so with the more confidence as, from the nature of my bequests and the benefit to result from them, I trust that my fellow-citizens of Philadelphia will observe and evince especial care and anxiety in selecting members for their city councils and other agents.

There are, however, some restrictions which I consider it my duty to prescribe, and to be, amongst others, conditions on which my bequest for said college is made and to be enjoyed, namely: First. I enjoin and require that if at the close of any year the income of the fund devoted to the purposes of the said college shall be more than sufficient for the maintenance of the institution during that year, then the balance of the said income, after defraying such maintenance, shall be forthwith invested in good securities, thereafter to be and remain a part of the said capital; but in no event shall any part of the said capital be sold, disposed of, or pledged to meet the current expenses of the said institution, to which I devote the interest, income, and dividends thereof, exclusively. Secondly. I enjoin and require that no ecclesiastic, missionary, or minister of any sect whatsoever shall ever hold or exercise any station or duty whatever in the said college; nor shall any such person ever be admitted for any purpose, or as a visitor, within the premises appropriated to the purposes of the said college. In making this restriction I do not mean to cast
64 any reflection upon any sect or person whatsoever; but as there is such a multitude of sects, and such a diversity of opinion amongst them, I desire to keep the tender minds of the orphans who are to derive advantage from this bequest free from the excitement which clashing doctrines and sectarian controversy are so

apt to produce. My desire is that all the instructors and teachers in the college shall take pains to instil into the minds of the scholars the purest principles of morality, so that on their entrance into active life they may, from inclination and habit, evince benevolence towards their fellow-creatures and a love of truth, sobriety, and industry, adopting at the same time such religious tenets as their matured reason may enable them to prefer. If the income arising from that part of the said sum of two millions of dollars remaining after the construction and furnishing of the college and out-buildings shall, owing to the increase of the number of orphans applying for admission, or other cause, be inadequate to the construction of new buildings or the maintenance and education of as many orphans as may apply for admission, then such further sum as may be necessary for the construction of new buildings and the maintenance and education of such further number of orphans as can be maintained and instructed within such buildings as the said square of ground shall be adequate to shall be taken from the final residuary fund hereinafter expressly referred to for the purpose, comprehending the income of my real estate in the city and county of Philadelphia and the
65 dividends of my stock in the Schuylkill Navigation Company, my design and desire being that the benefits of said institution shall be extended to as great a number of orphans as the limits of the said square and buildings therein can accommodate.

XXII. And as to the further sum of five hundred thousand dollars, part of the residue of my personal estate, in trust, to invest the same securely, and to keep the same so invested, and to apply the income thereof exclusively to the following purposes, that is to say—

1. To lay out, regulate, curb, light, and pave a passage or street on the east part of the city of Philadelphia, fronting the river Delaware, not less than twenty-one feet wide, and to be called Delaware avenue, extending from South or Cedar street all along the east part of Water street squares and the west side of the logs which form the heads of the docks, or thereabouts; and to this intent to obtain such acts of assembly and to make such purchases or agreements as will enable the mayor, aldermen, and citizens of Philadelphia to remove or pull down all the buildings, fences, and obstructions which may be in the way, and to prohibit all buildings, fences, or erections of any kind to the eastward of said avenue; to fill up the heads of such of the docks as may not afford sufficient room for the said street; to compel the owners of wharves to keep them clean and covered completely with gravel or other hard materials, and to be so levelled that water will not remain thereon after a shower of rain; to completely clean and keep clean all the docks within the limits of the city fronting on the Delaware, and to pull down all platforms carried out from the east part of
66 the city over the river Delaware on piles or pillars.

2. To pull down and remove all wooden buildings, as well those made of wood and other combustible materials, as those called brick-paned, or framed buildings filled in with bricks, that are erected within the limits of the city of Philadelphia, and also to prohibit the

erection of any such building within the said city's limits at any future time.

3. To regulate, widen, pave, and curb Water street, and to distribute the Schuylkill water therein, upon the following plan, that is to say, that Water street be widened east and west from Vine street all the way to South street in like manner as it is from the front of my dwelling to the front of my stores on the west side of Water street, and the regulation of the curb-stones continued at the same distance from one another, as they are at present opposite to the said dwelling and stores, so that the regulation of the said street be not less than thirty-nine feet wide and afford a large and convenient footway, clear of obstructions and incumbrances of every nature; and the cellar doors on which, if any shall be permitted, not to extend from the buildings on the footway more than four feet; the said width to be increased gradually, as the fund shall permit, and as the capacity to remove impediments shall increase, until there shall be a correct and permanent regulation of Water street, on the principles above stated, so that it may run north and south as straight as possible. That the ten feet
67 middle alley, belonging to the public, and running from the centre of the east squares of Front street, all the way down across Water street to the river Delaware, be kept open and cleaned as city property, all the way from Vine to South street; that such part of each centre or middle alley as runs from Front to Water street be arched over with bricks or stone, in so strong a manner as to facilitate the building of plain and permanent stone steps and platforms, so that they may be washed and kept constantly clean, and that the continuance of the said alleys from the east side of Water street, be curbed all the way to the river Delaware, and kept open forever.

(I understand that those middle or centre alleys were left open in the first plan of the lots on the east front of the city, which were granted from the east side of Front street to the river Delaware, and that each lot, on said east front, has contributed to make those alleys, by giving a part of their ground in proportion to the size of each lot; those alleys were, in the first instance, and still are, considered public property, intended for the convenience of the inhabitants residing in Front street, to go down to the river for water and other purposes; but owing to neglect or to some other cause on the part of those who have had the care of the city property, several encroachments have been made on them by individuals by wholly occupying, or building over them, or otherwise, and in that way the inhabitants, more particularly those who reside in the neighborhood, are deprived of the benefit of that wholesome air which their opening and cleansing throughout would afford.)

68 That the iron pipes in Water street, which by being of smaller size than those in the other streets, and too near the surface of the ground, cause constant leaks, particularly in the winter season, which, in many places render the street impassable, be taken up and replaced by pipes of the same size, quality, and

dimensions in every respect, and laid down as deeply from the surface of the ground as the iron pipes which are laid in the main streets of the city; and as it respects pumps for Schuylkill water and fire plugs in Water street, that one of each be fixed at the southwest corner of Vine and Water streets, and so running southward; one of each near the steps of the centre alley going up to Front street; one of each at the southwest corner of Sassafras and Water streets; one of each near the steps of the centre alley going up to Front street, and so on at every southwest corner of all the main streets and Water street, and of the centre alleys of every square, as far as South or Cedar street; and when the same shall have been completed, that all Water street shall be repaved by the best workmen, in the most complete manner, with the best paving water stones, after the height of the curbstones shall have been regulated throughout, as well as the ascent and descent of the street, in such manner as to conduct the water through the main streets and the centre alleys to the river Delaware as far as practicable; and whenever any part of the street shall want to be raised, to use nothing but good paving gravel for that purpose, so as to make the paving as permanent as possible. By all which improvements, it is my intention to place and maintain the section of the city above referred to in a condition which will correspond better with the general cleanliness and appearance of the whole city, and be more consistent with the safety, health, and comfort of the citizens.

69

And my mind and will are, that all the income, interest, and dividends of the said capital sum of five hundred thousand dollars shall be yearly, and every year, expended upon the said objects, in the order in which I have stated them, as closely as possible, and upon no other objects until those enumerated shall have been attained; and, when those objects shall have been accomplished, I authorize and direct the said the mayor, aldermen, and citizens to apply such part of the income of the said capital sum of five hundred thousand dollars, as they may think proper, to the further improvement, from time to time, of the eastern or Delaware front of the city.

XXIII. I give and bequeath to the Commonwealth of Pennsylvania the sum of three hundred thousand dollars, for the purpose of internal improvement, by canal navigation, to be paid into the State treasury by my executors, as soon as such laws shall have been enacted by the constituted authorities of the said Commonwealth as shall be necessary and amply sufficient to carry into effect, or to enable the constituted authorities of the city of Philadelphia to carry into effect, the several improvements above specified, namely: 1. Laws to cause Delaware avenue, as above described, to be made, paved, curbed, and lighted; to cause the buildings, fences, and other obstructions now existing to be abated and removed; and to prohibit the creation of any such obstructions to the eastward of said Delaware avenue. 2. Laws to cause all wooden buildings as above described to be removed, and to prohibit their future erection within the limits of the city of Philadelphia. 3. Laws providing for the gradual widening, regulating, paving, and curbing Water

70

street as hereinbefore described, and also for the repairing the middle alleys, and introducing the Schuylkill water and pumps, as before specified; all which objects may, I persuade myself, be accomplished on principles at once just in relation to individuals, and highly beneficial to the public. The said sum, however, not to be paid, unless said laws be passed within one year after my decease.

XXIV. And as it regards the remainder of said residue of my personal estate in trust, to invest the same in good securities, and in like manner to invest the interest and income thereof, from time to time, so that the whole shall form a permanent fund, and to apply the income of the said fund—

1st. To the further improvement and maintenance of the aforesaid college, as directed in the last paragraph of the XXIst clause of this will.

2d. To enable the corporation of the city of Philadelphia to provide more effectually than they now do for the security of the persons and property of the inhabitants of the said city by a competent police, including a sufficient number of watchmen, really suited to the purpose; and to this end I recommend a division of the
71 city into watch districts, or four parts, each under a proper head, and that at least two watchmen shall, in each round or station, patrol together.

3d. To enable the said corporation to improve the city property, and the general appearance of the city itself, and in effect to diminish the burden of taxation, now most oppressive, especially on those who are the least able to bear it. To all which objects the prosperity of the city, and the health and comfort of its inhabitants, I devote the said fund as aforesaid, and direct the income thereof to be applied yearly and every year forever, after providing for the college as hereinbefore directed as my primary object. But if the said city shall knowingly and wilfully violate any of the conditions hereinbefore and hereinafter mentioned, then I give and bequeath the said remainder and accumulations to the Commonwealth of Pennsylvania for the purposes of internal navigation; excepting, however, the rents, issues, and profits of my real estate in the city and county of Philadelphia, which shall forever be reserved and applied to maintain the aforesaid college, in the manner specified in the last paragraph of the XXIst clause of this will; and if the Commonwealth of Pennsylvania shall fail to apply this or the preceding bequest to the purposes before mentioned, or shall apply any part thereof to any other use, or shall for the term of one year from the time of my decease fail or omit to pass the laws hereinbefore specified for promoting the improvement of the city of Philadelphia, then I
72 give, devise, and bequeath the said remainder and accumulations (the rents aforesaid always excepted and reserved for the college as aforesaid) to the United States of America, for the purposes of internal navigation and no other.

Provided, nevertheless, and I do hereby declare, that all the preceding bequests and devises of the residue of my estate to the mayor, aldermen, and citizens of Philadelphia, are made upon the following express conditions, that is to say:

First. That none of the moneys, principal, interest, dividends or rents, arising from the said residuary devise and bequest, shall at any time be applied to any other purpose or purposes whatever than those herein mentioned and appointed.

Second. That separate accounts, distinct from the other accounts of the corporation, shall be kept by the said corporation concerning the said devise, bequest, college, and funds, and of the investment and application thereof; and that a separate account or accounts of the same shall be kept in bank, not blended with any other account, so that it may at all times appear on examination by a committee of the legislature, as hereinafter mentioned, that my intentions had been fully complied with.

Third. That the said corporation render a detailed account annually, in duplicate to the legislature of the Commonwealth of Pennsylvania, at the commencement of the session, one copy for the senate and the other for the house of representatives, concerning the said devised and bequeathed estate and the investment and application of the same, and also a report in like manner of
73 the state of the said college; and shall submit all their books, papers, and accounts touching the same, to a committee or committees of the legislature for examination, when the same shall be required.

Fourth. The said corporation shall also cause to be published in the month of January, annually, in two or more newspapers, printed in the city of Philadelphia, a concise but plain account of the state of the trusts, devises, and bequests herein declared and made, comprehending the condition of the said college, the number of scholars, and other particulars needful to be publicly known, for the year next preceding the said month of January, annually.

XXV. And whereas, I have executed an assignment, in trust, of my banking establishment, to take effect the day before my decease, to the intent that all the concerns thereof may be closed by themselves, without being blended with the concerns of my general estate, and the balance remaining to be paid over to my executors, hereinafter mentioned, not to interfere with the said trust in any way except to see that the same is faithfully executed, and to aid the execution thereof by all such acts and deeds as may be necessary and expedient to effectuate the same, so that it may be speedily closed and the balance paid over to my executors, to go, as in my will, into the residue of my estate: And I do hereby authorize, direct, and empower the said trustees, from time to time, as the capital of the said bank shall be received, and shall not be wanted for the discharge of the debts due thereat, to invest the same in good securities in
74 the names of my executors, and to hand over the same to them to be disposed of according to this my will.

XXVI. Lastly, I do hereby nominate and appoint Timothy Paxson, Thomas P. Cope, Joseph Roberts, William J. Duane, and John A. Barclay, executors of this my last will and testament.

I recommend to them to close the concerns of my estate as expeditiously as possible, and to see that my intentions in respect to the re-

sidue of my estate are and shall be strictly complied with: And I do hereby revoke all other wills by me heretofore made.

In witness, I, the said Stephen Girard, have to this my last will and testament, contained in thirty-five pages, set my hand at the bottom of each page, and my hand and seal at the bottom of this page, the said will executed, from motives of prudence, in duplicate, this sixteenth day of February, in the year one thousand eight hundred and thirty.

[SEAL.] STEPHEN GIRARD.

Signed, sealed, published, and declared by the said Stephen Girard, as and for his last will and testament, in the presence of us, who have at his request hereunto subscribed our names as witnesses thereto, in the presence of the said testator and of each other, February 16, 1830.

JOHN H. IRWIN.
SAMUEL ARTHUR.
S. H. CARPENTER.

75 Whereas, I, Stephen Girard, the testator named in the foregoing will and testament, dated the sixteenth day of February, eighteen hundred and thirty, have since the execution thereof purchased several parcels and pieces of real estate, and have built sundry messuages, all of which, as well as any real estate that I may hereafter purchase, it is my wish and intention to pass by the said will: Now, I do hereby republish the foregoing last will and testament, dated February 16, 1830, and do confirm the same in all particulars: In witness, I, the said Stephen Girard, set my hand and seal hereunto the twenty-fifth day of December, eighteen hundred and thirty.

[SEAL.] STEPHEN GIRARD.

Signed, sealed, published, and declared by the said Stephen Girard, as and for a republication of his last will and testament, in the presence of us who, at his request, have hereunto subscribed our names as witnesses thereto, in the presence of the said testator and of each other, December 25th, 1830.

JOHN H. IRWIN.
SAMUEL ARTHUR.
JNO. THOMSON.

Whereas, I, Stephen Girard, the testator named in the foregoing will and testament, dated February 16, 1830, have since the
76 execution thereof, purchased several parcels and pieces of land and real estate and have built sundry messuages, all which, as well as any real estate that I may hereinafter purchase, it is my intention to pass by said will; and whereas, in particular, I have recently purchased from Mr. William Parker the mansion house, outbuildings, and forty-five acres and some perches of land, called Peel Hall, on the Ridge road, in Penn township: Now, I declare it to be

my intention, and I direct that the orphan establishment provided for in my said will, instead of being built as therein directed upon my square of ground between High and Chesnut and Eleventh and Twelfth streets, in the city of Philadelphia, shall be built upon the estate so purchased from Mr. W. Parker; and I hereby devote the said estate to that purpose, exclusively, in the same manner as I had devoted the said square, hereby directing that all the improvements and arrangements for the said orphan establishment, prescribed by my said will as to said square, shall be made and executed upon the said estate, just as if I had in my will devoted the said estate to said purpose—consequently, the said square of ground is to constitute, and I declare it to be a part of the residue and remainder of my real and personal estate, and given and devised for the same uses and purposes as are declared in section twenty of my will, it being my intention that the said square of ground shall be built upon and improved in such a manner as to secure a safe and permanent income for the purposes stated in said twentieth section. In witness
77 whereof, I, the said Stephen Girard, set my hand and seal hereunto, the twentieth day of June, eighteen hundred and thirty-one.

[SEAL.] STEPHEN GIRARD.

Signed, sealed, published, and declared by the said Stephen Girard as and for a republication of his last will and testament, and a further direction in relation to the real estate therein mentioned, in the presence of us who, at his request, have hereunto subscribed our names as witnesses thereto, in the presence of the said testator and of each other, June 20, 1831.

S. H. CARPENTER.
L. BARDIN.
SAMUEL ARTHUR.

78 PHILADELPHIA, *December* 31*st*, 1831.

Then personal appeared Samuel Authur and S. H. Carpenter, two of the witnesses to the foregoing will, and the second codicil or republication thereof, and on their oaths did say that they were present and did see and hear Stephen Girard, the testator in the said will and second republication thereof named, sign, seal, publish, and declare the same as and for his last will and testament and republication thereof, and that at the doing thereof he was of sound mind, memory, and understanding, to the best of their knowledge and belief; and at the same time appeared Jno. Thomson, one of the witnesses to the first republication of said will, and on his solemn affirmation did say that he was present and did see and hear Stephen Girard, the testator in the first republication of said will named, sign, seal, publish, and declare the same as and for a republication of his last will and testament. And the said Samuel Authur, another of the witnesses to said first republication of said will, on his oath did further say that he was present and did see and hear Stephen Girard, the testator in the first republication of said will named, sign, seal,

publish, and declare the same as and for a republication of his last will and testament, and they both did say that at the doing thereof he was of sound mind, memory, and understanding, to the best of their knowledge and belief.

Coram

J. HUMES, *Register.*

DECEMBER 31, 1831.

Timothy Paxson and Thomas P. Cope, two of the executors, affirmed, and Joseph Roberts, William P. Duane, and John A. Barclay, the other executors, sworn, and letters testamentary granted unto them.

79 Please to issue subpœna to the first Monday of December, 1860.

C. INGERSOLL,
For the Complainants.

3 November, 1860.

B. PATTON, Esq., *Clerk C. C., &c.*

Filed Nov. 5, 1860.

79½ Afterwards, to wit, on the third day of December, in the year last aforesaid, the said subpœna was returned served, which return is filed, and is in the words and of the tenor following, to wit:

80 UNITED STATES, *Eastern District of Pennsylvania, sct.:*

The President of the United States to the city of Philadelphia:

For certain causes offered before the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, we command and strictly enjoin you that, laying all other matters aside, and notwithstanding any excuse, you personally be and appear before the judges of the said court, at a session of the same court, to be holden at Philadelphia, on the first Monday of December next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said court shall have considered in this behalf; and have you then there this writ, and this you are in no wise to omit, under the penalty of four hundred dollars.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Philadelphia, this fifth day of November, 1860, and in the eighty-fifth year of the independence of the said United States.

J. BURCHARD,
Pro Clerk of Circuit Court U. S.

NOTE.—The defendants in this case are required to enter their appearance in the clerk's office of said court on or before the first Mon-

day of December next; otherwise, the bill may be taken pro confesso.

Returnable on the first Monday of December next.

C. INGERSOLL,
Solicitor for Complainant.

Nov. 10, 1860.

Served the within writ by reading the same to Alexander Henry, mayor of the city of Philadelphia, and by leaving with him a copy of the same. So answers

J. S. YOST, *U. S. Marshal.*
Per A. H. TIPPIN, *Dep. U. S. M.*

81 October session, 1860, in equity.

MADELEINE HENRIETTE GIRARD and OTHERS
vs.
THE CITY OF PHILADELPHIA. } No. 8.

Enter my appearance for defendants.
(Signed) CHAS. E. LEX,
Solicitor for the City of Philadelphia.

Dec. 1, 1860.

To CLERK C. C. U. S.

Filed December 1, 1860.

81½ *Answer of respondent.*

Afterwards, to wit, on the twenty-sixth day of January, A. D. 1861, comes the respondent, by its solicitor, Charles E. Lex, esquire, and presents its answer; which answer is filed, and is in the words and of the tenor following, to wit:

82 To the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania:

The answer of the city of Philadelphia to the bill of complaint of Madeleine Henriette Girard, Marguerite P. Lardy, Anne Stephanie de Lentilhac, and Alfred de Lentilhac, her husband, Frabricius Devars Dumaine, a minor, and Marguerite Palmire Dumaine, a minor, by their next friend, John Devars Dumaine, aliens.

These respondents, saving and reserving to themselves, now and at all times hereafter, all and all manner of exception to the various errors, imperfections, and uncertainties in the said bill of complaint contained, for answer thereunto or unto so much thereof as they are advised that it is material for them to answer, they answer and say that the plaintiffs in the said bill, together with John Devars Dumaine, in right of his wife, Ann Henriette Girard, John Auguste Girard, Marie C. Girard Deroux, and Louis Deroux, her husband, and Francoise

Constance Fenelon Vidal, on the 24th day of December, 1852, caused a writ of summons in ejectment to issue out of this court to October sessions, 1852, No. 12, against the defendants in their corporate name of the mayor, aldermen, and citizens of Philadelphia, which said writ was duly served, and the suit thereby instituted is yet pending and undetermined.

That in the said suit the parties therein plaintiff sought to recover from the defendants the same lands in Schuylkill and Columbia counties which the plaintiffs in the bill filed pray may be transferred to them.

That the said plaintiffs in the said bill, together with John Devars Dumaine, in right of his wife, Ann Henriette Girard, Marie C. Girard Deroux, and Louis Deroux, her husband, Francois C. Fenelon Vidal, Marie Antoinette Hemphill, Harriet Girard Clark, and John Y. Clark, her husband, and Caroline E. Girard Peale, her husband, on the 22d day of December, 1852, caused certain writs of summons in ejectment to issue out of the supreme court of the Commonwealth of Pennsylvania, to December term, 1852, Nos. 79, 80, 81, and 83, against the defendants in their said corporate name of the mayor, aldermen, and citizens of Philadelphia, which writs were duly served, and the suits thereby instituted are yet pending and undetermined; and in the said suits the plaintiffs therein sought to recover from the defendants the houses and lands in the city of Philadelphia mentioned in the said bill.

And the said plaintiffs in the said bill, together with John F. Girard, John Fabricius Girard, Louis F. Deroux, and Marie, his wife, Francois C. Vidal, John Y. Clark, and Harriet, his wife, Maria A. Hemphill, Franklin Peale, and Caroline E., his wife, have, since the filing of the said bill, namely, on the 3d day of September, 1859, caused a writ of summons in ejectment to issue out of the court of common pleas for Schuylkill county, in the Commonwealth of Pennsylvania, to September term, 1859, No. 703, against the defendants, which writ was duly served, and the suit thereby instituted is yet pending and undetermined. In the said suit the parties therein plaintiff seek to recover from the defendants one of the tracts of land in Schuylkill county, containing about 400 acres, which the plaintiffs in the bill filed pray may be transferred to them. And the defendants claim the same benefit as if they had pleaded in form the matters above stated, coupled with an answer setting forth the facts herein above mentioned. And if the court should determine that none of the facts above set forth are sufficient to abate or bar the plaintiffs' bill, then the defendants pray that the plaintiffs may be required to elect between the said proceedings at law and the present suit in equity.

And the defendants, without waiving the matters hereinbefore stated as an answer in lieu of a plea, further answering, say,
83 that it is true as therein stated that the late Stephen Girard died at his domicil, in the city of Philadelphia, in December, in the year 1831, unmarried, without issue, leaving neither father or mother, but leaving a brother, Etienne Girard, and the heirs and representa-

tives of another brother, John Girard, then deceased, and the heirs and representatives of a sister, Sophia Girard, also then deceased. But whether or not the said Etienne Girard is now deceased, and whether the parties mentioned in the said bill were his children, living at the time of his alleged death, is not known to these respondents, though they have no reason to believe to the contrary, and are content that the same may be held and taken to be as in the bill alleged.

That the said Stephen Girard died possessed of a large real and personal estate. But the amount and value of the same is greatly overstated in the said bill, as will hereafter be particularly shown and set forth.

That the said Stephen Girard, in his lifetime, on or about the 16th February, 1830, duly made and published his last will in writing, and also did, on the 25th of December, 1830, and on the 20th June, 1831, make and publish codicils thereto, which said will and codicils were duly proved before the register of wills for the city any county of Philadelphia, and letters testamentary thereon issued to the parties therein appointed to be the executors thereof.

That by the said last will and testament the said testator, after making certain bequests to trustees or corporations for charitable purposes, and bequests to his relatives and friends, made the following bequests and devises to the respondents by their then corporate name of "The mayor, aldermen, and citizens of Philadelphia," namely:

1. The sum of ten thousand dollars, in trust to invest the same, and with the income, yearly, to purchase fuel and distribute the same amongst poor white house and room keepers residing in the city of Philadelphia.

2. All the residue and remainder of his real and personal estate, in trust (1) as to the sum of two millions of dollars, out of his personal estate, to apply and expend so much as might be necessary in erecting, in a prescribed location, a permanent college, with suitable outbuildings, sufficiently spacious for the residence and accommodation of at least three hundred scholars, poor white male orphans of the city of Philadelphia, between the age of six and ten years, to remain until they shall arrive at between fourteen and eighteen; and the requisite teachers and other persons necessary to the institution, and in supplying furniture, books, and all things needful for the same; and in further trust, to apply the income of so much of the $2,000,000, after erecting and furnishing the said college, to maintain the same; (2) as to the sum of $500,000 out of the personal estate, in trust, to invest the same, and apply the income annually; *(a)* to lay out, pave, and light a street or passage fronting the river Delaware, to be called Delaware avenue, extending from Vine to Cedar street; *(b)* to pull down and remove all wooden or other buildings constructed of combustible materials within the limits of the city of Philadelphia, and to prohibit the future erection of any such; and *(c)* to widen, regulate, pave, and curb Water street, in the said city, and to distribute the Schuylkill water therein upon a plan set forth by the said testator; and *(d)* when the said objects should have been

accomplished, to apply the said income from time to time to the further improvement of the Delaware front of the city; (3) and as to the remainder, to apply the income, including therein as well as the rents and income of his real estate in Pennsylvania, and the income of the proceeds of real estate elsewhere situate directed to be sold, as well as his personal property, in trust—

1. To the further improvement and maintenance of said college.

84 2. To enable the said corporation to provide more effectually than then existed for the security of persons and property of the city by a competent police.

3. To enable "the said corporation to improve the city property and the general appearance of the city itself, and, in effect, to diminish the burden of taxation, now most oppressive, especially on those who are least able to bear it."

But the said last-mentioned bequest and devise was upon this further trust, that if the income arising from that part of the two millions of dollars remaining, after the construction and furnishing of the college and out-buildings, should, owing to the number of orphans applying for admission, or other cause, be inadequate to the construction of new buildings, or the maintenance and education of as many orphans as might apply for admission, that such further sum as might be necessary for the construction of new buildings and the maintenance and education of such further number of orphans as could be maintained and instructed within such buildings, as the place appropriated for the erection of the said same, (containing about forty acres of ground,) should be adequate to, should be taken from the income of the said residuary estate.

And of the residuary estate, the testator declared the trusts to be the said improvement of the city, after providing for his said college as his primary object.

And the respondents submit that the income of the whole of the testator's residuary estate is to be applied to the maintenance and enlargement of the said college, if the same is needed for such purposes. And that the said city corporation is not entitled to apply any part of the said income for the municipal purposes mentioned by the testator until the college is fully and adequately provided for. And that so much of said income as is not needed and used for such purposes the defendants are entitled to use for such municipal purposes as are indicated in the said will.

And for a further answer to so much of the bill as alleges that the testator did not bequeath the whole "remainder of the said residue" of his estate for the support and maintenance of the said college, but only the income of his real estate in the city and county of Philadelphia, and the dividends of his stock in the Schuylkill Navigation Company, they say that, on the contrary, they allege and insist and submit that the testator bequeathed and devised all the residue and remainder of his real and personal estate to the respondents, in trust, among other things, so far as regarded his real estate in Pennsylvania, to apply the net income to the same uses and purposes as were

declared of and concerning the residue of his personal estate; and of the said personal estate he declared the uses and purposes to be—

1. As to $2,000,000 to erect the college aforesaid;
2. As to $500,000, to improve the eastern front of the city; and
3. As to the remainder, to apply the same—

(a.) To the further improvement and maintenance of the said college, if the income of what remained of the sum of $2,000,000 would not suffice for its enlarged maintenance;

(b.) For the improvement of the police;

(c.) For municipal purposes.

Which declaration of said uses and purposes, they say, requires and authorizes them to apply the whole of the net income of the remaining real and personal estate of the testator to maintain the said college, and that until all the demands of the same are supplied they will not be allowed to expend the said income for other purposes.

85 That the legislature of the Commonwealth of Pennsylvania, by an act approved March 24th, 1832, entitled "An act to enable the mayor, aldermen, and citizens of Philadelphia to carry into effect certain improvements and to execute certain trusts," authorized the respondents to open the said Delaware avenue, widen the said Water street, and to provide for the removal of wooden buildings, and forbid their future construction in the said city; and in § 24 thereof, provided as follows: "That it shall be lawful for the mayor, aldermen, and citizens of Philadelphia to exercise all such jurisdiction, enact all such ordinances, and do and execute all such acts and things whatsoever as may be necessary and convenient for the full and entire acceptance, execution, and prosecution of any and all the devises and bequests, trusts, and provisions contained in the said will," (of Mr. Girard,) "which are the subjects of the preceding parts of this act, and to enable the constituted authorities of the city of Philadelphia to carry which into effect, the said Stephen Girard has desired the legislature to enact the necessary laws."

And by a supplement to the said act, approved April 4, 1832, the said corporation, through their select and common councils, were authorized to provide, by ordinance or otherwise, for the election or appointment of such officers and agents as they might deem essential to the duties and trusts enjoined and created by the said will, which said acts of assembly the respondents pray may be taken as part of this their answer, as if the same were herein at large set forth.

That the executors of the said will handed over, delivered, assigned, and paid in the months of January, April, and May, 1833, and subsequently, to the defendants, then known by the corporate name of the mayor, aldermen, and citizens of Philadelphia, as the residuary legatees of the said testator, certain certificates of stock and loans and other evidences of debt in which the personal estate of the testator had been invested by him or by the said executors.

The said corporation, under the advice of counsel, set apart from the said personal estate certificates of stock or loans of the market

value of $10,000 as an appropriation of so much thereof to fulfil the trust of the testator to purchase fuel and distribute the same among poor white house and room keepers of the said city; and in like manner they set apart certificates of stocks or loans of the market value of $500,000, as an appropriation of so much of the said personal estate to fulfil the trust for the opening of Delaware avenue, &c. And they further set apart from the said personal estate like certificates of the market value of 2,000,000 of dollars as an appropriation of so much thereof for the purpose of building, furnishing, and maintaining the said college. The balance of the said personal estate the said corporation considered and treated as part of the residue of the testator's estate, to be applied, together with the income of his real estate, to the municipal purposes directed by the testator, and they accordingly applied the net income to the municipal purposes indicated by the testator, until the same was required for the college, as will be hereinafter mentioned.

The said corporation, upon the death of the testator, entered upon all the real estate in the State of Pennsylvania devised by the said will, and held and now hold the same, except such thereof as has been taken from them, as will be hereafter mentioned, for the purpose and uses and in the manner directed by the testator in his said will.

The income of the said fund, or appropriation of ten thousand and five hundred thousand dollars, has been appropriated respectively to the purchase and distribution of fuel and the opening of the Delaware avenue and the widening of Water street, as directed by the testator.

The construction of the said college buildings was commenced in the year 1833, and finished in the year 1847. For a time the
86 income alone of the said two millions of dollars was used for this purpose, but from time to time, as the necessity of a speedy prosecution of the work required more than the annual income would supply, parts of the capital were sold. At one time this was rendered imperative by the failure of some of the corporations, in whose stocks or loans the capital was invested, to pay dividends or interest. Finally, upon the completion of the college buildings, the whole of the two millions had been absorbed. Then the contingency provided for by the testator arrived, namely, there was no remaining part of the $2,000,000 with which to maintain the college, and, as the testator had directed, recourse was had to the income of the residuary for that purpose. From that time to the present the whole of the net income from the residuary estate, including therein all the net income of the real estate held by the defendants, has been appropriated to the maintenance and endowment of the said college and used for that purpose.

The real estate owned, or supposed to be owned, by Mr. Girard at the time of his decease, and which he devised, or supposed he had devised, to the said corporation, consisted, besides houses and unoccupied lots of ground in the city and county of Philadelphia, of 54 tracts of unseated land in Schuylkill and Columbia counties, contain-

ing about twenty-two thousand eight hundred acres; of an undivided three-fourth parts in thirteen tracts of unseated land in Schuylkill county, containing about four thousand acres; of fifteen tracts of land, containing about eight thousand three hundred and eighty acres in Erie county, in the State of Pennsylvania; of two undivided third parts of about two hundred and seven thousand acres of land near Washita, in the State of Louisiana; and of acres of land in the State of Kentucky.

The co-tenants of the said thirteen tracts of land in Schuylkill county instituted proceedings for a partition of the same among the owners, which proceedings were so carried on, in due course of law, as to terminate in a sale of the lands some time in the year 1851, and the said corporation's share of the proceeds was duly received and applied to certain improvements of a portion of the real estate devised to them, situate in the city of Philadelphia.

The next of kin of Mr. Girard, or some of them, in the year 1850, brought an action of ejectment against the said corporation to recover possession of eleven of the said fifty-four tracts of land in Schuylkill and Columbia counties, (containing about four thousand four hundred acres,) on the ground, as they alleged, that the said testator had no title thereto at the date of his will. In 1853 the case was heard by a jury, who returned a verdict for the plaintiffs, which verdict the court, after argument upon a motion for a new trial, refused to set aside or order a new trial. A writ of habere facias possessionem was subsequently issued, and the plaintiffs were put into possession of the said eleven tracts by the marshal for the eastern district of Pennsylvania.

The title to a number of the remaining tracts in Schuylkill and Columbia counties is claimed by various parties, and in some cases ejectments have been brought and are now pending. In all these cases of adverse titles the claims are of title paramount to Mr. Girard's.

The lands in Erie county were claimed by the heirs of John B. Wallace, esq., who brought their suit in the court of common pleas of Erie county, to May term, 1853. In this case a verdict, after trial by a jury, was rendered for the plaintiffs, which was affirmed by the supreme court of Pennsylvania upon a writ of error sued out by the defendants in the year 1855.

The lands in Louisiana were claimed by the United States. An act of Congress having been passed to enable the defendants and certain parties claiming to be the owners of land in Louisiana,
87 similarly situated, to proceed in equity to establish their title, they availed themselves, in conjunction with their co-devisee, the corporation of the city of New Orleans, of the privilege so given, and instituted the proper proceedings in the district court of the United States for the district of Louisiana. In this proceeding in the district court a decree was made in favor of the plaintiffs. From this the United States appealed, and after hearing and argument the Supreme Court of the United States reversed the decree and decided and decreed the title to be in the United States.

The lands in Kentucky were allowed to remain in the charge of the agent employed by Mr. Girard, for sale. The greater part of them have been sold at prices averaging less than two dollars per acre; the proceeds have been regularly accounted for, and invested as part of the residue of the testator's estate. For that portion of the lands unsold, the price of one dollar per acre cannot be obtained, and the lands are still waiting purchasers.

Of the real estate out of the city and county of Philadelphia, there remain in the possession of the defendants, the balance of the lands in Kentucky, and forty-three tracts, containing about seventeen thousand acres, in Schuylkill and Columbia counties. About one-third of this land contains coal; the balance is only valuable for its timber, or for agricultural purposes.

The defendants admit that at the time of the death of Mr. Girard, the territorial boundaries of the corporation of the mayor, aldermen, and citizens of Philadelphia were the north side of Vine street, the south side of South street, and the rivers Delaware and Schuylkill. These boundaries were established originally by the provincial charter of 1701, and until the year 1854 had never been changed or altered. The legislative power of this corporation, at the time of the said death, was vested in two bodies called the select and common councils, one third of the members of the former and all of the latter were annually elected. The powers and the constitution of these legislative bodies had been from time to time variously enlarged, curtailed, and modified by the authority of the legislature.

The city of Philadelphia, thus bounded, formed a part of the territory of the county of Philadelphia. The legislature from time to time, commencing in the year 1794, set apart certain of the territory of the county, for the boundaries of municipal corporations, and incorporated the inhabitants therein into bodies politic. The corporations thus formed, were named respectively "The commissioners and inhabitants of the district of Southwark;" "The commissioners of tha district of the Northern Liberties;" "The commissioners of the district of Spring Garden;" "The commissioners of the district of Kensington;" "The commissioners and inhabitants of the district of Moyamensing;" "The commissioners of the district of Penn;" "The commissioners and inhabitants of the district of Richmond;" "The district of West Philadelphia;" "The borough of Aramingo;" "The district of Belmont;" "The borough of Manayunk;" "The borough of Germantown;" "The borough of Frankford;" "The borough of Whitehall," and "The borough of Bridesburg." All of these corporations had certain legislative powers exercised by boards of commissioners or town councils.

The other corporations mentioned in the complainants' bill were township organizations, without any legislative powers.

The corporation of the mayor, aldermen, and citizens of Philadelphia were empowered to levy taxes to enable it to perform its corporate duties. Among these corporate duties were not those of providing for the support of the administration of justice, the care of the poor, the regulation of the port, the maintenance of a system of

public education, the opening of streets, &c. These were exercised by the county authorities. The county of Philadelphia, of which the city formed a part, had, among other county officers, three commissioners, one of whom was annually elected by the people
88 of the county. These commissioners were vested with the power to levy and collect the taxes for county purposes, among which were those which have just been enumerated, except the poor, and over the exercise of their discretion in the laying of these taxes the corporation of the city, as such, had no control. The care of the poor was separately provided for. A corporation for that purpose was in existence, which exercised the right to assess and levy the taxes necessary in their opinion for such purpose. Thus the taxes for county and poor always exceeded those of the city for her own municipal purposes. To instance one year for an example: In the year 1853, the tax of the city for her municipal purposes was fifty-eight cents on the one hundred dollars of the assessed value of property, while the county tax was for county, school, and poor purposes ninety cents on one hundred dollars. The improvement of the city, and the consequent increased value of property therein, always increased the amount of taxes, since the county rate was uniform, and assessed upon the value of the property.

This government of the city and county of Philadelphia, and its consequences and results, were well known to Mr. Girard. He was an inhabitant of the city for nearly fifty years, and was for several years a member of her councils.

The project of uniting parts or the whole of the county of Philadelphia into one local government was for some years previous to 1854 much discussed, and in the latter or the previous year its friends had so favorably impressed the community with its practicability and advantages, that a volunteer committee of citizens met publicly for the purpose of arranging the details and submitting them to the legislature of the Commonwealth for adoption into a law. The fruits of all this is to be seen in the act referred to in the plaintiffs' bill, and called the consolidation act. The select and common councils of the corporation of the mayor, aldermen, and citizens of Philadelphia had not an opportunity of being heard upon this subject by the legislature.

The common council of the said corporation at their meeting, held January 7, 1854, by a majority of votes, passed the following preamble and resolutions, to wit:

"Whereas a movement has been made in the house of representatives to consolidate the city of Philadelphia, incorporated districts, boroughs, and townships of the county of Philadelphia into one municipal corporation, and the measure contemplated being one generally desired by the citizens of the city of Philadelphia, they believing that the consolidation contemplated would be productive of increased prosperity to all included within its action; therefore:

"*Resolved*, That the Senators and members of the house of representatives from the city of Philadelphia, be, and they are hereby, requested to endeavor to secure the passage of an act to consolidate

the city, incorporated districts, boroughs, and townships into one municipality.

"*Resolved*, That the clerks of select and common councils be, and they are hereby, directed to transmit to the senators and members of the house of representatives from the city of Philadelphia, copies of the foregoing preamble and resolutions."

According to the course of proceeding, these resolutions were sent to the select council for concurrence. In this body, at their meeting on January 7, 1854, these resolutions were ordered to be printed for the use of the members, and at a meeting held January 19, it was resolved, "That a joint special committee of three members from each chamber be appointed to examine a bill now pending before the legislature, for consolidating the city and districts into one corporation, for the purpose of endeavoring to have the provisions of said bill placed upon such a basis as will best protect the interests and trusts of the city." In this resolution the common council concurred. Both bodies appointed their respective members of the committee. Before the committee could report upon the subject referred to them, the bill was passed into a law.

The defendants submit that their acquiesence or dissent in or to the proposed measure of consolidating the said corporations
89 could not have been effective to prevent or consummate that purpose. The said city corporation was the creature of the legislature, to be destroyed or perpetuated at its pleasure. The said corporation neither accepted or repudiated its new or altered charter; it had no choice offered to it but to obey the will of the legislature.

The defendants allege and submit that the act of assembly of February 2, 1854, entitled "A further supplement to an act entitled 'an act to incorporate the city of Philadelphia,'" did not destroy or abrogate the corporation of "the mayor, aldermen, and citizens of Philadelphia." It enlarged the territorial boundaries of the latter corporation, and changed its name to that of "The city of Philadelphia."

The first section of the said act provided that the powers of the corporation of the mayor, aldermen, and citizens of Philadelphia, as enlarged and modified by the said act, should be exercised and have effect over all the territory for the first time included within its corporate limits, and over all the inhabitants therein; and in the sixth section, that the said corporation should be vested with all the power, rights, privileges, and immunities of the corporation of the mayor, aldermen, and citizens of Philadelphia.

And the defendants deny that it was provided in the said act, that upon the election of a mayor and councils, as provided therein, the powers, rights, privileges, and immunities possessed and enjoyed by the said corporation of the mayor, aldermen, and citizens of Philadelphia, should cease and terminate, or that the same ceased or terminated upon the issue of any proclamation, or otherwise howsoever; but they allege and say that the powers, rights, privileges, and immunities of the said last-named corporation were expressly continued in full force, vigor, and effect.

The defendants further show, that it is provided in the said act that all estates and incomes, at the passage thereof, held by any of the corporations united by the said act, shall be held by the city of Philadelphia, upon and for the same uses, trusts, limitations, charities, and conditions as the same were held at that time; and the defendants pray that the said act and all supplements thereto may be taken as part of this, their answer, as if the same were herein at large set forth.

And the defendants, in answer to so much of the complainant's bill as professes to show that they are incapable and unable to carry into effect so much of the devise and bequest of the said testator as applies to the appropriation of such part of the income of the residue of his estate as shall remain annually, after the necessities of the said college are provided for, to municipal purposes, say that they deny that they are incapable or unable to make and apply such appropriation, as they now proceed to show.

The defendants submit to the court, whether the bequests and devise aforesaid to the mayor, aldermen, and citizens of Philadelphia was a gift to them absolutely, or whether the same was a devise and bequest in trust for the municipal purposes set forth.

If the court should be of opinion that the said bequest was an absolute gift, then the defendants submit that the plaintiffs have no right or title to call upon them to account therefor, or to question their title thereto.

But if the court should be of opinion that the said bequest was in trust for municipal purposes, they say that they claim to hold the same in trust to apply the said income for municipal purposes affecting and relating to the property and inhabitants situate and residing within that part of their corporation limits which is bounded by Vine and South streets, and the rivers Delaware and Schuylkill.

The said trust of the remainder of the residue of the testator's estate is for the following objects:

1. To the further improvement and maintenance of the said
90 college.

2. To enable the city to provide more effectually for the security of person and property by a competent police.

3. To enable the corporation to improve the city property and the general appearance of the city itself, and, in effect, to diminish the burden of taxation.

In respect to the execution of the said trusts, the defendants say, that they are in nowise hindered or interfered with by the provisions or consequences or effects of the said act of February 2, 1854; and they do not admit, nor have they admitted, that they cannot apply the said trust according to the will of the testator. By the said act of February 2, 1854, the councils of the said city are authorized and required to fix the rate and levy all the taxes authorized by law, within its corporate limits, (except the State tax,) and direct the amount to be applied and paid for health, school, poor, city, and other purposes according to law, and they are required to vote the said taxes so as to show how much is raised for the said objects re-

spectively. And they say, then, in voting said taxes they specify in their ordinance for such purpose how much of the taxes is assessed and levied for each object of taxation. Thus, in such ordinance assessing and levying the taxes for the yaar 1859, it is set forth as follows:

For the relief and employment of the poor, 15 cents in the $100 of the assessed value of said property.

For public schools, 28 cents in the $100 of the assessed value of said property.

For lighting the city, 9 cents in the $100 of the assessed value of said property.

For loan tax, 75 cents in the $100 of the assessed value of said property.

For expenses of police, 22 cents in the $100 of the assessed value of said property.

For care of public highways, 22 cents in the $100 of the assessed value of said property.

For city departments and ice boat, other than those mentioned, 4 cents in the $100 of the assessed value of said property.

And they also require that the receiver of taxes shall print on the bills furnished to the tax-payers the rate of taxes voted, and the objects.

And the defendants say, that whenever the income from the said residuary fund will suffice for the necessities of the said college, and leave a surplus, applicable to the other trusts declared concerning the income of the said residue, that they can apply such overplus to tha cost of maintaining the police in that part of the said city, between Vine and South streets, and the rivers Delaware and Schuylkill, and reduce the rate of taxation for the support of the police, on the property situated within the said limits, to the difference between the sum applicable from the said residuary for that purpose, and the sum assessed on property outside of the said limits; and if the sum applicable from the said residuary for the expenses of the police will amount to the whole sum necessary for such expenses within the said limits, they may levy no tax upon property within the said limits for such expenses. And if such surplus will exceed the amount needed for the police expenses within the said limits, they will be enabled to improve the corporate property within the said limits, or apply it to improve the appearance of that portion of the city without resort to taxation for that purpose. And if it will be within the terms of the trust to disregard the specific objects mentioned, then they may and can pay such surplus, beyond that which is needed for the necessities of the college, directly into the city treasury in aid of the tax fund, and levy and assess upon the property within the said limits a sum less the amount so paid in aid of the tax fund.

The defendants instance the foregoing as some of the modes in which they may administer the aforesaid trusts; and the said act, called the consolidation act, having provided that the prop-
91 erty or estates held by any of the corporations thereby united or consolidated, upon any trusts, should be held by the con-

solidated corporation upon the same trusts, limitations, charities, and conditions, expressly confers upon them the power and authority to carry out and execute the trusts in the said will in the manner they have designated. This administration of the trust, they submit, is in no wise contrary to public policy; and that no rule of public policy is violated by accepting and administering a gift to improve one portion of the city and not the rest; and that an example of such is to be found in that part of the will of Mr. Girard, which bequeaths the income of the sum of $500,000 to open one and widen another street in one portion of the city, and when these objects are accomplished, to apply the income "to the further improvement of the eastern or Delaware front of the city."

And the defendants referring to that part of the bill which alleges that since the passage of the said act of February 2d, 1854, there has been called into existence an interest in the said corporation, opposed to the performance of said trust, say that the aid of a court of chancery can as readily be moved to interfere under the constitution of the corporation as made by the said act, as under that which existed previously; and that when the defendants refuse or decline to execute the said trusts on the ground of their inability to perform their accepted duty therein, the interposition of chancery may be invoked; but they submit that they ought not to be deprived of their property on an imagination of difficulties that have not yet, at least, an existence.

And the defendants say that the said bequest is for a charitable use because it is for public purposes, and that the condition annexed by the testator, that no part of his real estate in Pennsylvania, "shall ever be sold or alienated," does not create a perpetuity forbidden by law, but that if any part of the said bequest is void, it is the condition and not the bequest.

And the defendants further answering say, that they never doubted that the said college was to be so administered that orphans born in the city of Philadelphia were to be admitted therein in preference to those born elsewhere, but that it was questioned whether the testator meant by the city of Philadelphia, the territorial limits of the corporation of the mayor, aldermen, and citizens of Philadelphia, or what was commonly and popularly known as the city of Philadelphia, namely, the built part of the county of Philadelphia; and it was also questioned what was an orphan within the meaning of the said will, whether a child who was without a father living was an orphan, or whether a parentless child alone was such orphan. The case mentioned in the plaintiffs' bill was submitted to the supreme court of Pennsylvania for decision upon the said questions, and not for any other purpose. And they say, in this connexion, that such case was not made and submitted by the defendants, as is therein alleged, but a bill was filed by a party who represented a child, whose admission into the college was refused because its mother was living, and that the suit was as to them in invitum.

And the defendants further answering say, that at the present time there is in their hands, possession, or control the following property,

real and personal, (exclusive of $10,000 and $500,000 set apart for furnishing the poor with fuel, and for the improvement of Delaware avenue front, &c.,) devised or bequeathed to them by the aforesaid testator, or the proceeds of the same, and no more or other, namely, in the city of Philadelphia, 152 dwelling houses or stores, 3 vacant lots of ground, 2 wharves, 567 acres of farm land, with the buildings thereon, in that part of the said city which formerly was the borough of Passyunk and the district of Moyamensing, besides the Girard College and the lot appurtenant thereto. In Schuylkill and Columbia county, in the State of Pennsylvania, 43 tracts, containing about 17,000 acres of land, about one-third of which is believed to contain anthracite coal; and, in the State of Kentucky, about acres of unimproved land; and of personal estate, the following, 92 namely:

Five per cent. loan of the State of Pennsylvania, of the par value of	$91,399 91
Five per cent. loan of the city of Philadelpha, of the par value of	52,103 18
Six per cent. loan of the city of Philadelphia, of the par vaule of	21,300 00
Five per cent. loan of the Schuylkill Navigation Company, par	2,175 22
Loan to the Franklin Institute	1,000 00
Germantown and Perkiomen Turnpike Company stock.	200 00
Philadelphia Exchange Company stock	10,000 00
Four thousand shares in the Danville and Pottsville Railroad Company	200,000 00
Two thousand and two hundred shares in the Schuylkill Navigation Company	110,000 00
Loan to Ridge-road Turnpike Company, par $10,000; certificate of interest, $900	10,900 00
One hundred and two shares in the Chesapeake and Delaware Canal Company	20,400 00
One hundred and two shares in the Susquehanna and Lehigh Turnpike Company	100 00
	519,578 31

The defendants say, that since their possession of the said devised and bequeathed estate, they have kept the real estate in good repair, improved the same whenever opportunities presented, by altering existing buildings to meet the increased wants of business or occupants, and erecting new ones in vacant ground, and have let out the same to tenants at as advantageous rents as was received by private owners of similar property. The real estate in that part of the city which was the district of Moyamensing and township of Passyunk, has been and is still rented and occupied for farming purposes, and for these purposes must continue to be rented and occupied for many years, as there is no demand for such improvements as would authorize their occupation by houses for residences or for business purposes.

The lands in Schuylkill county have remained as they were left by the testator, unimproved and without tenants. A number of years ago a lease of a large portion of that part of them supposed to contain coal was made to the Danville and Pottsville Railroad Company at a small rent, with a view to assist the said company in the prosecution of their improvement, and in the expectation that when their road was completed a market could be reached by it, at which the coal mined could be sold. But the effort proved abortive, and the company very soon abandoned their enterprise. The lands have been, until very recently, remote from improvements which would enable their products to be brought to market. However, lately in the neighborhood of the lands railroads have been built, and the lands have been advertised for rent, and the subject of accepting certain offers to lease them are now under the consideration of the proper committees or agents of the defendants.

The greater portion of the personal property remains in the same state, as to its investment, as it was left by the testator. This property (exclusive of the Delaware avenue fund and the fuel fund) is of the par value of $519,578 31, though its real value is of a far less sum. The investment in the stock of the Danville and Pottsville railroad, amounting to the par value of 200,000 dollars, is worthless, the company having become extinct some years ago. The investments in the stocks of the Schuylkill Navigation Company, the Chesapeake and Delaware Canal Company, the Susquehanna and Lehigh Turnpike, and the loan to the Ridge-road Turnpike Company, amounting to the total sum of $141,400, are without market value. Of the entire investments of this personal property, of the par value of $519,578 31, but the sum of about 178,000 dollars is, in interest or dividend, paying loans or stocks.

93 The gross income of the residuary estate, consisting of all of the testator's real estate held by the defendants, and the personalty, except that which has been set aside for the Delaware avenue fund, and for the fund to supply poor house and room keepers with fuel, was, in the year 1857, when the largest income ever realized from the estate was received, as follows:

Rent of real estate in the city of Philadelphia		$155,709 61
Income of real estate in Schuylkill county		64 00
Dividends and income from investments in stocks and loans		8,643 92
		164,417 53

The expenses chargeable against the same, for the same year, were—

Annuities	$1,100 00
Taxes and water rents	32,343 88
Salaries	3,700 00
Repairs	13,990 12
Incidental and miscellaneous	3,191 09
Lands out of the city, taxes, law expenses, &c	4,950 33

Improving real estate—			
Papering	$2,976 49		
Outside painting	1,474 99		
Inside painting	2,148 74		
		$6,600 22	
Permanent improvements—			
Improvement on vacant lot		2,982 63	
Erecting buildings		3,000 00	
			$71,858 27
Leaving net income			92,559 26

The sum expended for the purposes of the college for the same year was $95,538 59, being upwards of $3,000 beyond the net income of the estate. From whence this excess was obtained will be presently shown. The annual gross and net income of the residuary estate, and the application of the surplus, from the year 1832 to the present time, is hereafter exhibited in answer to one of the plaintiffs' interrogatories. An explanation of the mode of keeping the account of the estate is necessary to show why in some of the years the surplus has not been expended, and why in others a greater sum than such surplus has been disposed of. In the commencement of the year the defendants caused estimates to be made of the probable income of the estate, and an estimate of the expenses of charge of administration and for taxes, repairs, and improvements. The amount so estimated for expenses they appropriate for such purposes, and the difference between such estimated expenses and the income, they have, since 1847, appropriated, with one or two trifling exceptions, for the support of the college. At the end of the year the accounts are closed, and all sums unpaid, though appropriated, are carried to the next year's income. Thus, if an improvement be commenced, and not completed or paid for, the balance unpaid is so carried to the subsequent year's income. The amount of the balance is re-appropriated during the new year to the original object. When a series of years is examined, it will appear that the income and the expenditures balance, which, as has been stated, will not appear in each year's account.

In some instances the defendants have invested part of the income. They judged this proper, in order to replace, to the extent of the investments so made, in the capital of the residuary, which had been seriously impaired, in consequence of some of the corporations, in whose loans or stocks it was invested, having become bankrupt.

The defendants say, that the beneficiaries of the college will be limited only by the means to support them. Since its open-
94 ing the number of applicants for admission have far exceeded the ability to maintain them. The whole number of orphans who have applied for admission since 1847 has been 1,673, and there have been admitted 705. The number of inmates at present is 330; the number awaiting admission is 221. The whole, or nearly the

whole, of the applicants hitherto have been orphans born in the present city. Whenever the means at the command of the managers of the college will justify them in extending its benefits to orphans born in the State, outside of the city, the applications for admission will be largely increased.

The defendants deny that there is any sum of money in their hands, being accumulations of surplus unexpended income, except the sum invested as they have before stated. But they say that they have appropriated and applied the income of the said estate in the manner directed by the will of the testator. And they further deny that they, or the corporation of the mayor, aldermen, and citizens of Philadelphia have wrongfully or unnecessarily expended any of the moneys of the estate.

And the defendants, in reference to that part of the plaintiffs' bill as represents that the prospective value of the lands in Schuylkill and Columbia counties is so great as to justify the conclusion that their annual rent will far more than suffice for the wants of the college in any event, say, that although they are justified in believing that the land is of large value, and that it will eventually yield a very considerable income, yet they believe that the value is much overstated. The number of acres of said lands is not 29,000 and odd, as stated by the plaintiffs, but is actually but 17,000, and of this number, but one-third is supposed to contain coal. Their annual value, in rent for coal leave, is uncertain, depending upon the quality of the coal, freedom of the mines from faults, the absence of water, and the demands of trade.

To the interrogatories which the defendants are required to answer, thus say:

To the first. That they admit the fact of the death of Mr. Girard as inquired of therein, to be as is alleged in the bill, and that he died possessed of real and personal estate estimated to be of the value of several millions of dollars, and they are content to admit that the plaintiffs are of kindred to him, as in the bill stated.

To the second. That they admit the fact inquired of herein to be as is in the bill alleged, and that the exhibit marked A to the bill annexed is a true copy of his will and the codicils thereto.

To the third. They admit that the municipality called by the corporate name of the mayor, aldermen, and citizens of Philadelphia was established and chartered with the boundaries as stated in the bill. And that the said corporation was enlarged by force of the act of the general assembly of the Commonwealth of Pennsylvania, approved February 2, 1854, so as to embrace the territory governed by certain other corporate and quasi corporate bodies, mentioned in the bill. That so far as the interrogatory refers to the franchises, debts, taxes, and administrations thereof, they refer to the said act of assembly; at the same time they deny that any of the franchises of the corporation of the mayor, aldermen, and citizens of Philadelphia were abrogated by the said act, but that the same were continued and remain in full force and effect.

To the fourth. That what is called in the said interrogatory "the

consolidated charter," was not accepted by the corporators mentioned in the said interrogatory by any formal or public act. It was imposed upon them by the legislative authority. It was a matter of public notoriety that some of the said corporators petitioned
95 the general assembly of the Commonwealth therefor, and some protested against it. They admit that nearly all of the members of the legislature from the city and county of Philadelphia voted in favor of the said charter, as they ascertain from the published proceedings of the said assembly. That the proceedings of the select and common councils of the corporation of the mayor, aldermen, and citizens of Philadelphia, show that the last-mentioned body did, by a majority vote, approve of the proposed amended or extended or altered charter, but that the latter body did not. And for a further answer to the inquiry as to the proceedings of the municipal authorities of the said corporation, they refer to so much of their answer to the plaintiffs' bill as relates thereto.

To the fifth. That they have submitted to the court whether they are entitled to hold the property mentioned in the said interrogatory as absolute owners, or whether they hold in trust for the purposes mentioned in the interrogatory. If they are decreed to hold it in trust, they claim to hold in trust to improve the police and property, and to diminish taxation in that part of the city of Philadelphia which before the 2d of February, 1854, was comprised within the territorial limits of the corporation of the mayor, aldermen, and citizens of Philadelphia.

To the sixth. That they have not applied any portion of the property mentioned or referred to in said interrogatory to the municipal purposes therein mentioned, because the same has been required for the purposes and the support of the Girard College.

To the seventh. That they hold of the property which was of the said Stephen Girard, the following real estate, namely: in the city of Philadelphia, 152 dwelling houses and storehouses, the Girard College and its grounds, 3 vacant lots of land, 2 wharves, and 567 acres of farm land in that part of the city which was formerly the township of Passyunk and the district of Moyamensing. In the counties of Schuylkill and Columbia, in the State of Pennsylvania, 43 tracts, containing about 17,000 acres of land, about one-third of which is supposed to contain anthracite coal, and in the State of Kentucky about 1,000 acres of land. Beside the above named they hold no other realty of the estate of Mr. Girard.

The gross annual income of the real estate in the city of Philadelphia is about one hundred and fifty-six thousand dollars, and not more, and the clear annual income is eighty-six thousand dollars, and not more.

To the eighth. That they hold of personal property, which was of the testator, that which they have specifically set forth in their answer, (exclusive of $10,000 and 500,000 appropriated and held for the Delaware avenue improvement, and the fuel fund,) amounting to the par or nominal value of $519,578 31, though the real value thereof is of a much less sum. The annual income of the said property is

about $9,000, and no more. They hold no other personalty of the said estate, except that in this answer mentioned.

To the ninth. They answer in the affirmative.

To the tenth. That the sums assumed in the said interrogatory as the income of the personalty and realty are incorrect; the net income of both being less than therein stated, as they have been shown. That the sum mentioned as the one required for the annual expenses of the college is the sum now appropriated, because there is no further sum in their hands for that purpose; but the increased demands of the college, in consequence of the number of orphans applying for admission, require a much larger amount for its annual maintenance. And they are informed that there is hardly a limit to the amount which would be required for the maintenance of the college, if all the orphans applying for admission could be received. That there is no other deduction or abatement to be made from the net income of said real and personal estate, except the payment of
96 certain annuities of no great amount, after providing for the wants of the college, to precede the application of the income to the objects of improving the police, and the property of the city, the general appearance of the city itself, and diminishing the burden of taxation. And whether, if the said objects are not attainable, the said income should be enjoyed by the heirs-at-law of the said testator, the defendants submit to the judgment of the court.

To the eleventh. They answer in the negative.

To the twelfth. That to so much of the said interrogatory as inquires concerning accumulations of surplus income, they answer in the negative. And to so much thereof as inquires if they can or not apply surplus income for the municipal purposes mentioned in the said interrogatory, they answer that they can so apply such income.

To the thirteenth. That if the coal lands in the counties of Schuylkill and Columbia were worked and rented, the income of the estates of the said testator would be increased, but to what extent they are unable to form any estimate. But they believe that the necessities of the college will absorb nearly any amount of income which the estates may produce.

To the fourteenth. That the estates and income of the testator are not liable by the terms of the said will to any other charge except the annuities mentioned in the said interrogatory, and that the said annuities are from time to time falling in at the deaths of the respective annuitants.

And the defendants hereto annex accounts showing the yearly income of the residuary estate, and its annual appropriation.

1832. Income real estate		$44,907 60	
			$44,907 60
Appropriations:			
Annuities		3,500 00	
Salaries and incidentals		3,413 79	
Taxes and water rents		9,890 77	

	Repairs, &c.	$2,629 65	
	Lands out of the county, taxes, &c.	6,000 00	
			$25,434 21
1833.	Income real estate	55,607 66	
	Income personal estate	12,345 78	
			67,953 44
	Appropriations:		
	Annuities	4,300 00	
	Salaries and incidentals	7,801 61	
	Taxes and water rents	9,611 79	
	Repairs to real estate	10,858 89	
	Building stores and wharf	5,470 64	
	Building culvert	1,877 95	
	Building railroad	1,800 00	
	Paving	7,741 98	
	Lands in Louisiana	1,026 55	
			50,489 41
1834.	Income real estate	62,856 38	
	Income personal estate	11,348 20	
			74,204 58
	Appropriations:		
	Annuities	4,300 00	
	Salaries and incidentals	5,656 95	
	Taxes and water rents	10,473 42	
	Repairs	12,141 12	
	Building stores and wharves	12,529 36	
	Lands in Pennsylvania and Kentucky	1,192 15	
	Lands in Erie	279 29	
	Lands in Louisiana	1,231 14	
	Building culvert	2,122 05	
	Building railroad	4,228 55	
	Paving	9,229 47	
	Police	26,322 53	
			89,706 03
1835.	Income real estate	72,317 36	
	Income personal estate	17,406 80	
			89,724 16
	Appropriations:		
	Annuities	4,750 00	
	Salaries, &c	5,994 16	
	Taxes and water rents	13,175 80	
	Repairs	7,581 65	

	Lands out of the county	$2,035 32	
	Lands in Louisiana	1,140 00	
	Building stores	8,487 21	
	Police	27,831 74	
			$70,995 88
1836.	Income real estate	86,081 69	
	Income personal estate	21,970 63	
			108,052 32
	Appropriations:		
	Annuities	3,100 00	
	Salaries, &c	6,744 20	
	Taxes and water rents	12,655 69	
	Repairs	6,101 23	
	Lands out of the county	3,847 74	
	Building stores	13,092 95	
	Building market houses	20,000 00	
	Police	31,651 90	
			97,193 71
1837.	Income real estate	97,604 44	
	Income personal estate	27,747 24	
			125,351 68
	Appropriations:		
	Annuities	4,250 00	
	Salaries, &c	7,227 66	
	Taxes	13,180 92	
	Repairs	12,676 51	
	Lands out of the county	5,303 73	
	Building stores	25,680 90	
	Building wharf	12,000 00	
	Police	32,950 00	
			113,275 72
1838.	Income real estate	108,505 26	
	Income personal estate	25,000 24	
			133,505 50
	Appropriations:		
	Annuities	2,950 00	
	Salaries, &c	8,769 60	
	Taxes	15,977 44	
	Repairs	16,982 11	
	Lands out of the county	2,866 19	
	Building stores	104 90	
	Building wharf	7,000 00	
	Building tobacco warehouse	7,000 00	

	Building offices	$3,656 29	
	Iron main	23,000 00	
	Police	33,190 00	
			$121,496 53
1839.	Income real estate	112,576 46	
	Income personal estate	21,595 24	
			134,171 70
	Appropriations:		
	Annuities	4,050 00	
	Salaries, &c	7,027 97	
	Taxes	16,291 00	
	Repairs	14,881 35	
	Lands out of the county	1,911 55	
	Public squares	5,000 00	
	Wharves	2,050 00	
	Lamps and lamp posts	10,950 00	
	Paving	8,000 00	
	Improvements at Fairmount	14,000 00	
	Building offices	5,741 80	
	Police	33,055 75	
			122,959 42
1840.	Income real estate	111,312 24	
	Income personal estate	14,889 98	
			126,212 22
	Appropriations:		
	Annuities	3,600 00	
	Salaries, &c	5,216 44	
	Taxes	18,451 95	
	Repairs	8,321 88	
	Lands out of the county	4,401 65	
	Squares	4,000 00	
	Wharves	1,000 00	
	Lamps and posts	6,000 00	
	Paving	10,000 00	
	Improvements at Fairmount	14,000 00	
98	Culverts	5,000 00	
	Repairing streets	15,000 00	
	Police	33,248 50	
			128,240 42
1841.	Income real estate	113,410 34	
	Income personal estate	8,949 03	
			122,359 27

	Appropriations:		
	Annuities	$3,600 00	
	Salaries, &c	4,908 16	
	Taxes	19,442 61	
	Repairs	13,089 53	
	Lands out of the county	2,060 56	
	Police	33,107 00	
			$76,207 86
1842.	Income real estate	94,919 36	
	Income personal estate	3,722 69	
			98,642 05
	Appropriations:		
	Annuities	3,100 00	
	Salaries, &c	5,749 17	
	Taxes	19,089 14	
	Repairs	14,173 01	
	Lands out of the county	3,100 73	
	Squares	2,000 00	
	Wharves	700 00	
	Lamps and posts	4,000 00	
	Paving	6,000 00	
	Culverts	3,300 00	
	Repaving	9,000 00	
	Police	6,945 00	
			77,157 05
1843.	Income real estate	80,571 01	
	Income personal estate	1,853 18	
			82,424 19
	Appropriations:		
	Annuities	3,300 00	
	Salaries, &c	7,515 41	
	Taxes	19,443 75	
	Repairs	14,978 13	
	Lands out of the county	2,353 12	47,590 41
1844.	Income real estate	86,081 97	
	Income personal estate	1,768 68	
			87,850 65

	Appropriations:		
	Annuities	$4,400 00	
	Salaries, &c	17,286 48	
	Taxes	19,862 00	
	Repairs	14,990 90	
	Lands out of the county	3,542 24	
			$60,081 62
1845.	Income real estate	88,776 88	
	" personal estate	3,310 91	
			92,087 79
	Appropriations:		
	Annuities	3,300 00	
	Salaries, &c	4,982 33	
	Taxes	19,155 41	
	Repairs	14,710 02	
	Lands out of the county	1,984 28	
	Insurance	5,922 71	
	Building stores	28,965 25	
	Police	45,000 00	
			124,041 00
1846.	Income real estate	104,360 60	
	Income personal estate	6,815 50	
			111,176 10
	Appropriations:		
	Annuities	2,300 00	
	Salaries, &c	5,086 49	
	Taxes	19,113 04	
99	Repairs	15,000 00	
	Lands out of county	4,090 47	
	Rebuilding	7,000 00	
	Tax fund	43,000 00	
			95,590 00
1847.	Income real estate	105,584 10	
	Income personal estate	7,110 87	
			112,694 97
	Appropriations:		
	Annuities	2,300 00	
	Salaries, &c.	5,983 78	
	Taxes	22,228 62	
	Repairs	15,000 00	
	Lands out of the county	3,484 81	
	Wharves	7,600 00	

Improvement of property, Jones' alley	$31,000 00	
Building college	5,788 60	
Furnishing college	6,910 00	
Tax fund	1,750 00	
		$102,045 81
The excess of income over appropriations in the years 1832, 1833, 1835, 1836, 1837, 1838, 1839, 1841, 1842, 1843, 1844, 1846, and 1847, was	249,696 00	
The excess of appropriations over income in the years 1834, 1840, and 1845, was	49,482 86	
Net excess of income over appropriations		200,213 14

This excess was thus absorbed:

By advancing to the executors of Mr. Girard funds to aid them to complete the buildings on the square between Market, Chestnut, Eleventh and Twelfth streets. To obtain the funds so advanced, the city corporation borrowed money and repaid the same, with its interest, out of the income of the residuary estate, to the amount of 134,119 78

And by investments in Pennsylvania 5 per cent. loan, all the balance in their hands, except the sum of $13,805 77.

1848.	Income from real estate	109,742 38	
	" " Sch'l co.	192 55	
	" personal estate	8,283 22	
	" sundries	925 00	
			149,143 15
	Balance from 1847		13,805 77
			132,948 92

Appropriations:

Annuities	1,900 00
Taxes, &c.	24,300 00
Salaries	3,700 00
Repairs to real estate	12,059 95
Lands out of the county	4,736 10
Incidentals and miscellaneous	1,728 95
Improvements real estate, Jones' alley	5,000 00
Improvements real estate, 66 S. Third st.	8,000 00

	Improvements real estate, 25 N. Front	$800 00	
	Improvements real estate, 28 N. Front	200 00	
	Extending wharf	400 00	
	Culvert for use of houses belonging to estate	1,396 16	
	Purchase of right of way	1,500 00	
	College	31,821 83	
			$97,502 99
1849.	Income real estate	151,555 96	
	" " Sch'l co.	526 48	
	" personal estate	17,310 29	
			133,392 73
100	Appropriations:		
	Annuities	1,900 00	
	Taxes, &c	24,662 87	
	Salaries	3,700 00	
	Repairs	18,000 00	
	Incidentals	4,408 50	
	Lands out of the county	5,000 00	
	Painting real estate	848 95	
	College	72,743 78	
			131,264 10
1850.	Income real estate	120,507 49	
	Income personal estate	8,157 17	
			128,664 66
	Appropriations:		
	Annuities	1,900 00	
	Taxes, &c	23,197 57	
	Salaries	3,700 00	
	Repairs	6,843 10	
	Incidentals	2,709 39	
	Lands out of the county	6,752 86	
	Permanent improvements, real estate	3,962 57	
	Footway, Northern Liberties	381 69	
	Tax fund	9,000 00	
	College	81,368 81	
			151,268 29
1851.	Income real estate	123,166 50	
	Income personal estate	8,531 96	
			131,698 46

	Appropriations:		
	Annuities	$1,900 00	
	Taxes	23,822 33	
	Salaries	3,700 00	
	Repairs	6,120 94	
	Incidentals	9,445 42	
	Lands out of the county	5,025 31	
	Papering and painting	5,035 00	
	Permanent improvements	1,928 35	
	Curbing and paving around college	4,389 74	
	Gas in college	3,444 66	
	College	67,544 11	
			$132,355 86
1852.	Income real estate	122,523 26	
	Income real estate, Schuylkill co.	586 58	
	Income personal estate	9,080 86	
			132,190 80
	Appropriations:		
	Annuities	1,650 00	
	Taxes	24,554 25	
	Salaries	4,200 00	
	Repairs	5,593 85	
	Incidentals	3,798 72	
	Lands out of the county	5,392 68	
	Painting and papering	8,821 56	
	Permanent improvements	2,350 00	
	Improvements north Water st.	1,732 88	
	Curbing, paving, and water pipes, Girard College	1,928 00	
	Improvement Third and Chestnut sts.	57,845 43	
	Permanent improvement at Girard College	5,058 21	
	College	60,512 37	
			183,435 95
1853.	Income real estate	136,907 69	
	Income real estate Schuylkill co.	1,303 72	
	Income personal estate	8,458 96	
			146,670 37
	Appropriations:		
	Annuities	1,400 00	
	Taxes	27,406 81	
	Salaries	4,050 00	
	Repairs	8,965 85	

	Incidentals	$9,053 24		
	Lands out of the county	3,283 33		
	Papering and painting	3,075 14		
	Repairs at college	1,500 00		
	Permanent improvements	1,980 00		
	Permanent improvement at Third and Chestnut	41,708 99		
	Permanent improvement at college	441 79		
	Outfits for pupils at college	2,595 85		
	Curbing and paving	2,739 02		
	College	63,809 76		
			$173,985 86	
101	1854. Income real estate	152,277 90		
	Income personal estate	9,154 71		
			161,432 61	
	Appropriations:			
	Annuities	1,250 00		
	Taxes	26,480 52		
	Salaries	5,049 89		
	Repairs	7,871 36		
	Incidentals	2,078 91		
	Lands out of the county	3,145 18		
	Papering and painting	3,778 28		
	Ice house at college	1,289 68		
	College	71,402 37		
			122,346 19	
1855.	Income real estate	153,199 33		
	Income real estate Schuylkill co.	1,034 20		
	Income personal estate	8,318 32		
	Income sundries	363 87		
			162,915 72	
	Appropriations:			
	Annuities	1,100 00		
	Taxes	25,276 08		
	Salaries	4,800 00		
	Repairs	8,696 03		
	Incidentals	2,498 16		
	Lands out of the county	3,828 16		
	Papering and painting	7,048 81		
	Permanent improvements	3,000 00		
	College	81,754 84		
			138,002 08	

1856.	Income real estate	$152,462 61	
	Income real estate Schuylkill co.	877 79	
	Income personal estate	9,050 92	
			$162,391 32
	Appropriations:		
	Annuities	1,100 00	
	Taxes	30,175 81	
	Salaries	4,125 00	
	Repairs	12,096 45	
	Incidentals	6,973 16	
	Lands out of the county	2,936 60	
	Papering and painting	11,718 91	
	Permanent improvements	1,985 08	
	Buildings at college	4,493 83	
	College	49,288 50	
			124,893 34
1857.	Income real estate	155,709 61	
	Income real estate Schuylkill co.	64 00	
	Income personal estate	8,643 92	
			164,417 53
	Appropriations:		
	Annuities	1,100 00	
	Taxes	32,343 88	
	Salaries	3,700 00	
	Repairs	13,900 12	
	Incidentals	3,191 09	
	Lands out of the county	4,950 33	
	Papering and painting	6,600 22	
	Permanent improvements	2,982 63	
	Improvements at Coates street	3,000 00	
	New buildings at college	4,856 18	
	College	90,682 41	
			167,396 86
1858.	Income real estate	152,606 20	
	Income real estate Schuylkill co.	12 50	
	Income personal estate	8,661 29	
			161,278 99
	Appropriations:		
	Annuities	1,100 00	
	Taxes	29,941 01	
	Salaries	3,700 00	
	Repairs	12,990 07	
	Incidentals	3,236 22	
	Lands out of the county	6,014 17	

	Papering and painting	$7,013 92	
	Permanent improvements	2,488 91	
	Improvement at Coates street	33,115 91	
	College	88,767 86	
			$188,367 66
102	1859. Income real estate	148,550 38	
	Income lands Schuylkill co.	50 00	
	Income personal property	8,567 14	
			157,168 12
	Appropriations:		
	Annuities	1,100 00	
	Salaries	3,700 00	
	Carried forward	4,800 00	
	Brought forward $4,800 00		
	Taxes and water rents	28,361 55	
	Repairs	15,382 10	
	Lands out of the county	3,960 42	
	Permanent improvements	40,980 98	
		2,176 79	
	Miscellaneous	3,016 25	
	Insurance	722 00	
	Law expenses, lands out of the county	666 67	
	College	96,907 02	
			196,973 78

To the fifteenth. That they refer to their answers hereinbefore.

To the sixteenth. The total amount expended in building the said college was $1,935,737 46. This sum was the whole product of the income of the $2,000,000 set apart for the said college, and of the sale of the principal.

The amount expended in fitting and furnishing the same before it was opened for the reception of pupils, was $5,886 80.

To the seventeenth. The college was built, as has been stated in the last answer, exclusively from the proceeds of the income and sale of the capital of the $2,000,000. There was expended, as has been stated, the sum of $5,886 80 in fitting and furnishing, before it was opened. Since the college was opened in 1847, it has been maintained out of the income of the whole of the residuary estate, which has been always treated by the defendants as being composed of all of the testator's real and personal estate, except that set apart for the Delaware avenue improvement fund and the fuel fund. This fund is styled on the defendants' books the residuary fund. It is credited with rents of real and income of personal estate, and charged with annuities, taxes, repairs, and expenses of management;

and the balance has been treated as applicable for the purposes of the college. The defendants are unable to say how much of the income of the real estate in the city and county of Philadelphia has been applied for college purposes, as contradistinguished from the income of the personalty, for the reason that the income from both is blended on their books. The Schuylkill Navigation stock has paid no dividend since the college was opened.

To the eighteenth. The amount received by the corporation of the mayor, aldermen, and citizens of Philadelphia, as their portion of the purchase money of the land sold under proceedings in partition, as mentioned in the said interrogatory, was $54,099. It was received September 19th, 1851, and invested, temporarily, in six per cent. loan of the city of Philadelphia. The whole amount, with its interest, namely, $59,506 50, was finally appropriated in January, 1852, to improve the real estate which was devised by the said will to the defendants, Nos. 102 and 104 Chestnut street, and Nos. 50 and 52 South Third street. So much of the docket entries mentioned in the interrogatory as the defendants are required to furnish are as follow:

In the court of common pleas of Schulykill county. March term, 1849. No. 121.

CHRISTOPHER LOESER, plaintiff, *vs.* The MAYOR, ALDERMEN, and CITIZENS of Philadelphia, and Cornelius Stevenson. 103	Sums. in partition issued 19th Dec., 1848. For return, see writ,

(Hughes and E. Olmsted for the mayor, etc.)
30th March, 1849, narr. filed.

To the nineteenth. The proceeds of the sales of the lands in Kentucky are as follows:

1847, June 9	$120 79
1848, June 12	100 00
1851, July 31	158 21
1854, May 15	385 24
Total amount received	764 24

Which was invested as follows:

1848, Aug. 18, city 6 per cent. loan	$200 00	
1854, Jan. 10, city 6 per cent. loan	99 25	
June 8	380 00	
Balance to credit	84 99	
		764 24

To the twentieth. There are no entries in the journals of the councils mentioned in the interrogatory other than those of the dates in the said interrogatory concerning the proposal to consolidate into one the various municipal bodies of the county of Philadelphia.

To the twenty-first. There has been invested of the income of the residuary estate, and there yet remains in the hand of the defendants the following:

City loan.....	$3,300,	invested April 17, 1847.
	9,800,	invested June 8, 1847.
	800,	invested June 24, 1847.
	17,300,	invested July 19, 1847.
State 5 per cent. loan.....	$53,608 25,	invested July 17, 1843, costing $26,000.
	26,315 80,	invested Sept. 11, 1843, costing $15,000.
	10,796 30,	invested Jan. 26, 1841, costing $6,909 63.

To the twenty-second. That since the death of the testator, the following investments of the capital of his estate have been made by the mayor, etc.:

The mortgage of the Mount Carbon Railroad Company, amounting to $20,000, having been paid off, has been invested: $10,000 in loan of the guardians of the poor, and $10,203 18 in 5 per cent. loan of the county of Philadelphia.

The proceeds of the sale of the lands in Kentucky have been invested as mentioned in the answer to the nineteenth interrogatory.

The proceeds of the sale of lands in Schuylkill county was invested as has been mentioned in the answer to interrogatory eighteenth.

To the twenty-third. The testator, in his lifetime, had made arrangements to cover his square of ground between Chestnut and Market and Eleventh and Twelfth streets. To this end he had formed his plans of buildings, and consulted and employed various mechanics. Immediately after his death the residuary legatees, by their select and common councils, authorized and requested the executors, as such, to cause the square of ground mentioned "to be built upon and improved agreeably to the plan, contracts, and arrangements of the testator," and authorized them "to pay for the same out of the fund that may be in their hands as executors;" and stipulated, that the "receipts which they shall obtain, for all payments made by them in the prosecution of the said improvements, shall be accepted by the mayor, aldermen, and citizens of Philadelphia as a part, to the amount of said receipts, of the residuary estate devised and bequeathed, by the said testator, to the said mayor, aldermen, and citizens of Philadelphia."

The executors accordingly undertook the business of improving the square as above mentioned, and paid for the expenses of the same out of the funds of the estate in their possession. Finally, however, in 1836, the executors found themselves without funds
104 in their hands to complete the improvements, they having paid previously to the residuary legatees, without retaining sufficient to meet the demands on them for the cost of the improvement. The residuary devisees and legatees borrowed money and advanced it to the executors, to enable them to complete the buildings. The money so borrowed the said legatees repaid out of the income of the residuary estate.

The whole cost of the improvement upon the square was

$814,506 40: of this, the amount paid by the executors, out of the funds of the estate in their hands, was $680,386 62; and out of the income of the residuary estate, the corporation of the mayor, aldermen, and citizens paid $134,119 78.

How much of the sum so paid by the executors was paid from capital, and how much from interest or income on investments, or sums at interest, the defendants are unable to state. The sum paid by the mayor, aldermen, and citizens of Philadelphia was entirely from income.

The defendants are not able to state at what times the payments by the executors were made. They were necessarily very numerous, and commenced in the spring of 1832 and terminated in the spring of 1837.

To the twenty-fourth. The following-named sums have been expended for the erection of buildings upon the testator's real estate, (excepting the college and the buildings upon the square ground between Chestnut and Market, and Eleventh and Twelfth streets,) at the times hereinafter named, viz:

1835–6.	For stores on Delaware avenue, north of Market street	$22,603 83
1837.	For stores on Front, north of Market streets.	24,765 96
1838–9.	For offices on Fifth street, above Chestnut	9,398 09
1845.	For 4 stores on Water street	28,986 25
1857.	For buildings on lot, Coates street	3,000 00
1857–8–9.	For buildings on lot on Brown street	74,096 89

And the following-named sums for improving and rebuilding real estate, which was of the testator, viz:

1837.	For extending wharves	$12,000 00
1838.	For extending and rebuilding wharves opposite 5 and 6, Delaware avenue	7,000 00
1846.	For rebuilding property, No. 100 Chesnut street	7,000 00
1847.	For rebuilding property in Jones' alley	36,000 00
"	For extending and capping wharves	8,000 00
1848.	For improving property front of 66 South Third street	1,000 00
"	For improving property rear of 66 South Third street	7,000 00
1848.	For improving property 26 and 28 North Front street	1,000 00
1850.	For improving property 5 and 6 North Wharves	962 57
"	For improving foot-way, property, Northern Liberties	381 69
1852.	For improving property 13 and 15 North Water street	1,800 00
1852–3.	For rebuilding property 102 and 104 Chestnut, and 50 and 52 South Third street	99,552 42
1853.	For repairing damages by fire, 28 North Front street	512 60

To the twenty-fifth interrogatory. The total amount expended upon the said college, for the year 1859, was $96,907 01, as follows:

105 *Appropriations from the residuary fund, for the use of the directors of the Girard college for orphans, for the year* 1859.

	Appropr'd.	Expended.	Balance.
Appropriation to the committee on household, for—			
Subsistence, item No. 1	$23,000 00	$22,958 30	$41 70
Clothing, item No. 2	17,000 00	16,815 94	184 06
Salaries, items Nos. 3, 4, 5, 6, 7, 8, 9	6,700 00	6,700 00	----------
Wages, item No. 10	9,000 00	8,553 03	446 97
Furniture, item No. 11	1,500 00	1,423 13	76 87
Fuel, item No. 12	2,500 00	1,908 54	591 46
Gas, item No. 13	1,800 00	1,430 97	369 03
Repairs and improvem'ts, item No. 14	2,500 00	2,484 66	15 34
Improvement of grounds, item No. 15	2,500 00	2,418 93	81 07
Incidentals, item No. 16	1,500 00	1,403 43	96 57
Appropriation to the committee on instruction for—			
Salaries, items Nos. 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27	13,800 00	13,800 00	----------
School philosophical apparatus, item No. 28	500 00	490 40	9 60
Books and stationery	1,200 00	1,189 50	10 50
School and chapel furniture, item No. 30	500 00	498 96	1 04
Utensils and materials for chemical laboratory, item No. 31	250 00	334 33	15 67
Additional instruction, and to supply teachers in case of sickness, item No. 32	300 00	----------	300 00
Appropriation to committee on accounts for—			
Salaries, items No. 33, 34	1,650 00	1,650 00	----------
Printing, advertising, and newspapers, item No. 35	480 00	476 19	3 81
Appropriation to committee on library for—			
Library, books, and furniture, item No. 36	1,000 00	992 58	7 42
Appropriation to committee on discipline and discharge, for—			
Expenses binding out, advertising, &c., item No. 37	200 00	81 66	118 34
Reward of merit, item No. 38	300 00	251 76	48 24
Expenses of admission, advertising, &c., item No. 39	250 00	----------	250 00
Beds, bedding, and other furniture, for additional pupils at college, item No. 40	2,500 00	1,282 58	1,317 42
Deficiencies of appropriation, 1858, item No. 41	117 31	117 31	----------
New buildings at college—			
Balance January 1st, 1859, $7,432 21	----------	7,426 38	5 83
Appropriation approved April 28, 1859—			
Certain alterations in main building	2,500 00	2,418 44	81 56
Balance of former appropria'ns, $7,432 21	93,547 31	96,907 02	4,072 50

To the twenty-sixth. That on the 20th day of April, 1833, they set apart as the fund of $2,000,000 for erecting and maintaining the said college, the following stocks and loans, viz:

6,331	shares of stock in the Bank of the U. States,	valued at	$644,715
870,000	par Pennsylvania, 5 per cent. loan,	valued at	994,418
199,305	" " " " "		227,367
100,000	" City of Philadelphia, " "		113,500

The above fund, as has been before stated, was all absorbed in building the said college. The annual cost of its maintenance is defrayed from the income of the residuary of the estate, which comprises, as the defendants are advised, the whole of the testator's estate, except so much thereof as is appropriated to the Delaware avenue improvement fund of $500,000, and the fuel fund of $10,000.

To the twenty-seventh. The only sums, portions of the residuary estate, which have been expended on improvements of real estate, outside of the corporate limits, which were of the mayor, aldermen, and citizens of Philadelphia, were—

In 1839, the sum of $14,000; in 1840, the sum of $14,000; on the water-works of the said corporation at Fairmount.

In 1857, for buildings on lot in Coates street, the sum of $3,000; and in 1857, 1858, and 1859, the sum of $74,096 89, for buildings on the lot on Brown street.

The sum of $28,000, above mentioned, is the only sum which has been expended on the improvement of property not part of the residuary estate out of the corporate limits of the mayor, aldermen, and citizens of Philadelphia.

106 To the twenty-eighth. The five hundred and sixty-seven acres of farm land in the late districts of Moyamensing and Passyunk are leased for farms or gardens. The annual rent received therefor is $6,662 50.

To the twenty-ninth. That many alterations in the charters mentioned in the said interrogatory have been made by the legislature, but they are not able to specify whether the same were at the instance or against the remonstrance of the said corporation, or whether the said alterations were made without either the application or remonstrance aforesaid.

And the defendants answer, and specially insist to be available to them in such manner as may be according to the practice in equity and the rules of this honorable court, that Etienne Girard, the father of the plaintiffs, was one of the objects of the testator's bounty, and that a legacy was given to him by his said will, as by reference to the same will appear, and that the said Etienne Girard, before the filing of the plaintiffs' bill, claimed his said legacy from the executors of the said will under the same, and according to the same, and received his said legacy, to wit: on the 2d January, 1833, or thereabouts, from the said executors, under and according to the said will, and not otherwise. And the defendants say that the plaintiffs, who claim under the said Etienne Girard, and as his heirs-at-law, are concluded by the election of their ancestor, and cannot now claim against the said will.

And the defendants, further answering, say, and specially insist, to be available as aforementioned, that the said Etienne Girard and Francoise Fenelon Vidal, claiming to be, respectively, a brother and niece of the said Stephen Girard, filed their bill in this court to October sessions, 1836, No. 1, against the defendants by their then corporate name of the mayor, aldermen, and citizens of Philadelphia, and against the executors of the will of the said Stephen Girard,

wherein they prayed the court to declare the devise of the residue and remainder of the real estate to the defendants to be void, wherein said bill, upon final hearing on answer, replication, and proof, was dismissed by the said court, and upon appeal to the Supreme Court of the United States to January term, 1844, after argument and consideration, the said decree dismissing the said bill was affirmed. And the defendants say that by the said decree the trusts created and declared in the said will were decreed to be valid and lawful; and they pray leave to refer to and produce the record of the said suit, with the same effect as if the same were herein at large set forth.

The defendants, further answering, say, and here show to the court, that the plaintiffs claim to be decreed to be entitled to the possession and ownership of the said estate in inconsistent rights, for that in one part of their said bill they so claim because, as they allege, by reason of the effect of the said act act of assembly of February 2d, 1854, the defendants are disabled from executing the trusts of the said will; and in another part they say that the devise to them is an attempt to create a perpetuity, and therefore void. And they submit that the plaintiffs cannot in the same bill claim under the will and against the will, and they pray that the plaintiffs may be required to elect in which of the said rights they will claim.

All which matters and things are true, without this, that there are any other matters or things in the said bill contained, and not herein well and sufficiently confessed and avoided, traversed and denied, are true, as these defendants will maintain and prove.

107 And these defendants pray that they may be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

ALEX. HENRY, *Mayor.*

[Seal of the city of Philadelphia]

ALEXANDER HENRY,
Mayor of Philadelphia.
CHAS. E. LEX,
Solicitor of the City of Phil'd'a.

108 Filed January 26th, 1861.

108½ *Replication of complainants.*

Afterwards, to wit, on the thirteenth day of February, in the year last aforesaid, the replication of Madeleine Henriette Girard and others is presented by their said solicitor, Charles Ingersoll, esquire, which replication, being read and filed, is in the words and of the tenor following, to wit:

109 C. C. U. S., Oct. sess'r, 1860.

GIRARD *et al.*
vs.
THE CITY OF PHILADELPHIA. } No. 8.

The plaintiffs file the common replication.

(Signed) C. INGERSOLL,
For the Plaintiffs.

18 Feb'y, 1861.

B. PATTON, Esq.,
Clerk, &c.

Filed February 13th, 1861.

109½ *Agreement of counsel.*

Afterwards, to wit, on the day and year last aforesaid, the agreement of Charles Ingersoll, solicitor for the complainants, and Edward Olmsted, solicitor for the respondent, which agreement, being read and filed, is in the words and of the tenor following, to wit:

110 C. C. U. S., October sess., 1860.

GIRARD *et al.*
vs.
THE CITY OF PHILADELPHIA. } No. 8.

It is agreed that the evidence taken and reported by the examiner in the case of the bill filed by these plaintiffs against these defendants in this court to October sessions, 1859, No. 3, be regarded and used as if taken in this case.

(Signed) C. INGERSOLL,
For the Plaintiffs.

(Signed) EDW. OLMSTED,
For Defts.

12 Feb'y, 1861.

B. PATTON, ESQ., *Cl'k C. C. C.*

Filed February 13th, 1861.

110½ *Report of the examiner and evidence accompanying it.*

Afterwards, to wit, on the day and year last aforesaid, the examiner's report, (substituted in this case, to wit: No. 8, of October sessions, A. D. 1860, by agreement and order of February thirteenth, A. D. 1861,) together with the evidence taken therein before him, which report and evidence is in the words and of the tenor following, to wit:

October sessions, 1859.

111 GIRARD *et al.* *vs.* THE CITY OF PHILADELPHIA. } No. 3.

To the judges of the circuit court of the United States for the eastern district of Pennsylvania sitting in equity:

The undersigned, appointed examiner the 20th July, 1860, respectfully reports:

That having given notice to the respective solicitors, he was attended at his office the inst. by Charles Ingersoll, esquire, solicitor for the plaintiffs, and Edward Olmsted, esquire, solicitor for the defendants, when, after conference between them, it was thought not necessary to call witnesses on either side to the proofs about to be laid before the court, which it was said consisted of facts appearing by records, documents, and proceedings of a public character; and further, that to lay such records, documents, and proceedings entire before the court, parts of them only being pertinent, would be unnecessary and cumbersome to the case and inconvenient to the court. It was agreed by the said solicitors for the plaintiffs and defendants respectively, in manner and form following, that the undersigned should report at the request of said complainants:

112 That the following are true copies of entries in the journal of the senate of Pennsylvania, and shall be used as given in evidence:

TUESDAY, *January* 3, 1854.

This being the day appointed by the constitution for the meeting of the general assembly, a number of members of the senate, and other gentlemen elected to supply vacancies, assembled in the senate chamber.

The secretary of the Commonwealth being introduced, stated that in obedience to the directions of the eighty-seventh section of the act of July 2, 1839, entitled "An act relating to the elections of this Commonwealth," he presented to the senate the returns of the election of senators for the last year.

On motion, the said returns were then read, by which it appeared that the following persons were duly elected, viz:

First district—composed of the city of Philadelphia—Eli K. Price.

Second district—composed of the county of Philadelphia—Levi Foulkrod.

That the following is truly copied from page 3 of the journal of the senate of Pennsylvania, for the year 1854, and shall be used as given in evidence:

Number of the districts and names of the members of the senate, with the date of the expiration of their respective terms of service, arranged agreeably to the provisions of the apportionment bill of May 15, 1850.

113 I. District composed of the city of Philadelphia, William A. Crabb, 1854; Eli K. Price, 1856.

II. District composed of the county of Philadelphia, Samuel G. Hamilton, 1854; William Goodwin, 1855; Levi Foulkrod, 1856.

That the following are true copies of entries in the journal of the house of representatives of Pennsylvania, and shall be used as given in evidence:

TUESDAY, *January* 3, 1854.

* * * * *

The said returns were read, by which it appeared that the following gentlemen were returned as representatives of the city of Philadelphia, and the several counties of this Commonwealth, for the present year, viz:

City of Philadelphia.—William C. Patterson, M. W. Baldwin, George H. Hart, Henry K. Strong.

County of Philadelphia.—Thomas Manderfield, Robert M. Carlisle, George W. Hillier, John J. Boyd, Robert B. Knight, Isaac W. Moore, Richardson L. Wright, Erastus Poulson, James H. Hurtt, Benjamin R. Miller, Joshua S. Fletcher.

114 That the following are true copies of entries in the journal of the senate of Pennsylvania, and shall be used as given in evidence:

WEDNESDAY, *January* 18, 1854.

* * * * *

Agreeably to order, the senate resumed the consideration of bill No. 4, entitled "A further supplement to an act entitled 'An act to incorporate the city of Philadelphia,'" and

* * * * *

The question recurring, "Shall the bill pass?"

The yeas and nays were required by Mr. Crabb and Mr. Goodwin, and are as follows, viz:

Yeas.—Messrs. Barnes, Crabb, Cresswell, Darlington, Darsie, Evans, Ferguson, Foulkrod, Goodwin, Hamilton, Byron D. Hamlin, Ephraim U. Hamlin, Hendricks, Hiester, Jamison, Kinzer, McClintock, McFarlan, Mellinger, Piat, Price, Quiggle, Sager, Skinner, Slifer, Wherry, and McClaslin, speaker—27.

Nays.—None.

So the question was determined in the affirmative.

Ordered, That the clerk present the same to the house of representatives for concurrence.

That the following are true copies of entries in the journal of the house of representatives of Pennsylvania, and shall be used as given in evidence:

MONDAY, 30 *January*, 1854.

* * * * *

115 bill from the senate (No. 101) entitled "A further supplement to an act entitled 'an act to incorporate the city of Philadelphia.'"

* * * * *

October sessions, 1859.

111 GIRARD *et al.* *vs.* THE CITY OF PHILADELPHIA. } No. 3.

To the judges of the circuit court of the United States for the eastern district of Pennsylvania sitting in equity:

The undersigned, appointed examiner the 20th July, 1860, respectfully reports:

That having given notice to the respective solicitors, he was attended at his office the inst. by Charles Ingersoll, esquire, solicitor for the plaintiffs, and Edward Olmsted, esquire, solicitor for the defendants, when, after conference between them, it was thought not necessary to call witnesses on either side to the proofs about to be laid before the court, which it was said consisted of facts appearing by records, documents, and proceedings of a public character; and further, that to lay such records, documents, and proceedings entire before the court, parts of them only being pertinent, would be unnecessary and cumbersome to the case and inconvenient to the court. It was agreed by the said solicitors for the plaintiffs and defendants respectively, in manner and form following, that the undersigned should report at the request of said complainants:

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TUESDAY, *January* 3, 1854.

This being the day appointed by the constitution for the meeting of the general assembly, a number of members of the senate, and other gentlemen elected to supply vacancies, assembled in the senate chamber.

The secretary of the Commonwealth being introduced, stated that in obedience to the directions of the eighty-seventh section of the act of July 2, 1839, entitled "An act relating to the elections of this Commonwealth," he presented to the senate the returns of the election of senators for the last year.

On motion, the said returns were then read, by which it appeared that the following persons were duly elected, viz:

First district—composed of the city of Philadelphia—Eli K. Price.

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That the following is truly copied from page 3 of the journal of the senate of Pennsylvania, for the year 1854, and shall be used as given in evidence:

Number of the districts and names of the members of the senate, with the date of the expiration of their respective terms of service, arranged agreeably to the provisions of the apportionment bill of May 15, 1850.

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TUESDAY, *January* 3, 1854.

* * * * *

The said returns were read, by which it appeared that the following gentlemen were returned as representatives of the city of Philadelphia, and the several counties of this Commonwealth, for the present year, viz:

City of Philadelphia.—William C. Patterson, M. W. Baldwin, George H. Hart, Henry K. Strong.

County of Philadelphia.—Thomas Manderfield, Robert M. Carlisle, George W. Hillier, John J. Boyd, Robert B. Knight, Isaac W. Moore, Richardson L. Wright, Erastus Poulson, James H. Hurtt, Benjamin R. Miller, Joshua S. Fletcher.

114 That the following are true copies of entries in the journal of the senate of Pennsylvania, and shall be used as given in evidence:

WEDNESDAY, *January* 18, 1854.

* * * * *

Agreeably to order, the senate resumed the consideration of bill No. 4, entitled "A further supplement to an act entitled 'An act to incorporate the city of Philadelphia,'" and

* * * * *

The question recurring, "Shall the bill pass?"

The yeas and nays were required by Mr. Crabb and Mr. Goodwin, and are as follows, viz:

Yeas.—Messrs. Barnes, Crabb, Cresswell, Darlington, Darsie, Evans, Ferguson, Foulkrod, Goodwin, Hamilton, Byron D. Hamlin, Ephraim U. Hamlin, Hendricks, Hiester, Jamison, Kinzer, McClintock, McFarlan, Mellinger, Piat, Price, Quiggle, Sager, Skinner, Slifer, Wherry, and McClaslin, speaker—27.

Nays.—None.

So the question was determined in the affirmative.

Ordered, That the clerk present the same to the house of representatives for concurrence.

That the following are true copies of entries in the journal of the house of representatives of Pennsylvania, and shall be used as given in evidence:

MONDAY, 30 *January*, 1854.

* * * * *

115 bill from the senate (No. 101) entitled "A further supplement to an act entitled 'an act to incorporate the city of Philadelphia.'"

* * * * *

* * * * * *

And on the question, shall the same pass? the yeas and nays were required by Mr. Moore and Mr. Patterson, and are as follows, viz:

Yeas.—Messrs. Abraham, Adams, Atherton, Baldwin, Ball, Beans, Beck, Beyer, Bigham, Boyd, Bush, Byerly, Caldwell, Calvin, Carlisle, Chamberlin, Cook, Cummings, Daugherty, Davis, Deegan, De France, Dunning, Edinger, Eldred, Ellis, Fletcher, Foster, Fry, Gallentine, Gilmore, Groom, Gwin, Hamilton, Hart, Hillier, Hills, Hipple, Hammel, Hunsecker, Hunter, Hurtt, Jackman, Kilgore, Knight, Laury, (Lehigh,) Linn, Magee, Maquire, Manderfield, McKee, Miller, Montgomery, Moser, Muse, Palmer, Parke, Parmlee, Passmore, Patterson, Poulson, Putney, Rawlins, Roberts, Sallade, Scott, Shenk, Sidle, Smith, (Berks,) Smith, (Crawford,) Stewart, Stockdale, Strong, Struthers, Wheeler, Wicklein, Wright, Zeigler, and Chase, Speaker.—79.

Nays.—Messrs. Barton, Horn, and Moore.—3.

So the question was determined in the affirmative, and ordered, that the clerk return the same to the senate and request its concurrence in the amendments made thereto by this house.

That the following are true copies of entries in the journal of the senate of Pennsylvania, and shall be used as given in evidence:

116 TUESDAY, *January* 31, 1854.

* * * * * *

On motion of Mr. Price and Mr. Crabb, the amendments made by the house of representatives to bill No. 4., entitled, "A further supplement to an act entitled 'an act to incorporate the city of Philadelphia,'" were twice read and considered.

The amendments embraced in the second, fourth, sixth, tenth, twelfth, fifteenth, sixteenth, seventeenth, eighteenth, twentieth, twenty-second, twenty-seventh, thirty-first, thirty-six, thirty-seventh, thirty-eight, thirty-ninth, forty-second, forty-eighth, fifty-first, fifty-second sections were concurred in.

On the question, Will the senate concur in the amendment embraced in the fifty-third section?

* * * * * *

On the question, Will the senate concur in the first division?

It was determined in the affirmative.

On the question, Will the senate concur in the second division?

* * * * * *

So the question was determined in the affirmative.

WEDNESDAY, *February* 1, 1854.

* * * * * *

Mr. Foulkrod from the committee appointed to compare bills and present them to the governor for his approbation, made a report, which was read as follows, viz:

That, in conjunction with a similar committee from the

117 house of representatives, they have compared, and, on January thirty-first, presented to the governor for his approbation, the bill entitled as follows, to wit: "A further supplement to an act entitled 'an act to incorporate the city of Philadelphia.'"

SATURDAY, *February* 11, 1854.

* * * * * *

The deputy secretary of the Commonwealth being introduced, presented a message from the governor, which was read as follows, viz:

EXECUTIVE DEPARTMENT, *Harrisburg, Feb.* 11, 1854.

To the senate and house of representatives of the Commonwealth of Pennsylvania:

GENTLEMEN: I have approved and signed the following acts of the general assembly, viz:

On the 25th ult., * * * * *

On the 2d inst., "A further supplement to an act entitled 'an act to incorporate the city of Philadelphia.'"

That the following are true copies of entries in the journal of the select council of the city of Philadelphia, and shall be used as given in evidence:

THURSDAY, *June* 22, 1854.

* * * * * *

Mr. Cornman offered the following, to wit:

Resolved, That the Hon. Robert T. Conrad, mayor of the city of Philadelphia, be requested to issue the proclamation, as provided in the 6th section of the act of consolidation, on the 5th day of
118 July next, and that he fix the time for the dissolution of the various local boards of commissioners, &c., at forty days thereafter.

Which was read. And being under consideration, Mr. Miller moved to amend.

* * * * * *

So the amendment was agreed to.

The resolution as amended was agreed to.

That the following are true copies of entries in the journal of the common council of the city of Philadelphia, and shall be used as given in evidence:

THURSDAY, *June* 22, 1854.

Message from the select council, informing this council that they had passed the following resolution:

Resolved, That the honorable Robert T. Conrad, mayor of the city of Philadelphia, be requested to issue his proclamation, forthwith dissolving the different corporations superseded by the 6th section of the act consolidating the city of Philadelphia, to take effect on the thirtieth inst.

* * * * * *

So common council concurred.

That the following are true copies of entries in the journal of the select council of the city of Philadelphia, and shall be used as given in evidence:

THURSDAY, *June* 29, 1854.

* * * * * *

119 A message from the mayor was received, stating that he had approved and signed the resolution of councils directing him to issue his proclamation fixing a period for the termination of the various municipalities in the county of Philadelphia, and that he had issued his proclamation.

That all acts of provincial and State legislatures of Pennsylvania shall be used as given in evidence.

That all inventories, accounts, and other papers and proceedings of record in the offices of the register for the county of Philadelphia, and the clerk of the orphan's court of the county of Philadelphia, and the prothonotary of the court of common pleas of the county of Philadelphia, in the matter of the estate of the late Stephen Girard, shall be used as given in evidence.

That the maps called Barnes' new map of the consolidated city of Philadelphia, published in 1855, and the map called, a map of the county of Philadelphia, from actual survey by Charles Ellet, in accordinance with the act of assembly passed June 30, 1839, shall be used as given in evidence.

That in the various municipalities prior to the 2 February, 1854, within the county of Philadelphia, by the laws and usages regulating the same when new roads or streets were to be acquired and opened for public use, the acquisition of the ground was an expense
120 paid by the county, and the grading, draining, paving and all other charges were an expense paid in some of the municipalities by the owners of the adjacent soil, and in others by the public.

That the following is truly copied from the annual report of the comptroller of the city of Philadelphia to the select and common councils, dated the 17th January, 1857, and shall be used as given in evidence:

Taxes of 1856.

John M. Coleman and Peter Armbruster, receivers.

	Assessed.
1st ward	$76,287 27
2 ward	60,263 52
3 ward	46,587 22
4 ward	53,748 93
5 ward	263,333 50
6 ward	408,238 94
7 ward	135,978 07
8 ward	254,445 60
9 ward	211,681 69
10 ward	156,824 61
11 ward	83,620 65

12 ward	77,783 60
13 ward	100,786 07
14 ward	95,598 21
15 ward	109,323 38
16 ward	56,714 43
17 ward	36,238 51
18 ward	50,852 83
19 ward	95,890 38
20 ward	94,931 51
21 ward	54,306 79
22 ward	59,771 54
23 ward	64,883 01
24 ward	97,525 75
	2,745,016 01

121 That of the twenty-four wards mentioned in the said comptroller's report, those called the 5, 6, 7, 8, 9 and 10, are the wards which composed the late corporation called the mayor, aldermen, and citizens of Philadelphia.

That the following is a true copy of a memorial to the legislature of Pennsylvania, presented in January, 1854, and shall be used as given in evidence:

122 To the honorable the senate and house of representatives of the Commonwealth of Pennsylvania:

The memorial of the executive committee appointed by the citizens of the city and county of Philadelphia, to present to your honorable bodies the subject of consolidating the various civil sub-divisions of the city and county into one municipal corporation, respectfully represents:

That the measure of uniting into one the small governments into which Philadelphia is now unhappily divided has been attracting the attention of the people for many years, and has finally enlisted in its support the organic declarations of all political parties, and the approbation of the mass of the inhabitants. Believing, as your memorialists do, that this beneficial union can no longer be delayed without enduring injury to the people of Philadelphia, and satisfied that your honorable bodies will cheerfully yield to an early consideration of the subject, your memorialists have, with much care, prepared a bill to present to the legislature, at an early day of the session; not, however, with any desire to insist upon details, but to demonstrate that the measure itself, with all its vast ramifications, is susceptible of being reduced into a simple and plain system, free of all legal, constitutional, or practical difficulty.

It is necessary to a correct understanding of this important subject that your honorable bodies should be possessed of a view of the various municipalities into which the actual city of Philadelphia is now cut up, as well as of the other public corporations to which the

people of the city and county are subjected; and, with this
123 object your memorialists will proceed to submit a correct statement thereof. It will be seen that that part of Philadelphia which bears the corporate title of the city is but a small portion of the actual city, the suburbs having become part of the city itself, and given place to suburbs more remote. In 1863 the taxables of the city and suburbs are as follows:

The corporate city	22,024
Northern Liberties	9,130
Spring Garden	12,813
Kensington	11,563
Southwark	8,193
Moyamensing	6,153
Penn	2,658
North Penn	701
West Philadelphia	1,438
Germantown	2,203
Richmond	1,873
Frankford borough	1,270
Belmont, estimated	300
Aramingo	300
	80,624

The balance of the county, which is composed of rural districts, except the borough of Manayunk, which contains 1,530 taxables, and the borough of Whitehall has the following number of taxables, viz:

Passyunk	335
Kingsessing	500
Blockley	504
Roxborough	716
Bristol	501
Unincorporated Northern Liberties	311
Bridesburg	259
Oxford	492
Lower Dublin	1,017
Byberry	239
Moreland	115
	4,730

Total.

City and suburbs	80,624	
Manayunk borough	1,330	
Bridesborough	259	
Rural districts	4,730	
	86,943	taxables.

Philadelphia was laid out by William Penn on a neck of
124 land between the rivers "Delaware and Schuylkill, having two fronts on the water, each a mile, and two from river to river," and by his charter, dated the 25th October, 1701, he erected the said town of Philadelphia into a city. The powers of the city corporation were very limited, and by subsequent acts of assembly the regulation of the nightly watch, and the "enlightening" the streets, lanes, and alleys, and watering them, were vested in six wardens, elected by the inhabitants, whilst the pitching, paving, and cleaning the streets, and regulating the water courses and common sewers, were vested in six commissioners, elected in the same manner. The municipal duties of pitching, paving, cleaning, lighting, watching, and watering the streets were thus entrusted to two separate boards, with full taxable powers, but entirely irresponsible to the corporation of the city, which exercised no taxing powers whatever. By the Revolution the corporation of the city was dissolved and the justices of the peace were substituted for the mayor, recorder, and aldermen, in performing any duties or services required by the existing laws, and also for the mayor's court. The effect of these changes was, that in 1798 the municipal government of the city was parcelled out between the wardens of the city of Philadelphia and the commissioners for paving and cleaning the streets, who formed separate boards and had entirely separate powers of taxing, and the city court, which was held by the justices of the peace of the city, who, in their individual capacities, also exercised certain authorities in connexion with one or the other of the above bodies of local police. The citizens, however, desired a popular restoration of the old form of city government which should unite the various branches
125 of the police, then subsisting in different and necessarily discordant hands, under one legislative and executive head, and with these views the act of the 11th March, 1798, to incorporate the city of Philadelphia, was passed. Upwards of twenty acts of assembly have been since passed, altering this original law, and all these form what is popularly called the charter of the city. The mayor is elected by the people and is the nominal executive head, whilst the whole of the legislative power is vested in the select and common councils, consisting of thirty-two members, who are elected in separate districts. The powers of the city corporation are very extensive, and reach nearly every branch of municipal police. They have dammed the Schuylkill at Fairmount, and erected water works and gas works, built colleges, hospitals, markets, stores, tobacco warehouses, culverts, wharves, landings, bridges, railroads, and ice-boats, paved streets, laid water pipes and gas pipes, ornamented squares, and purchased grounds for the summer resort of their citizens.

The city debt is as follows:

Gas loans	$1,272,000 00
Other loans to 1st January, 1853	6,237,200 00
Other loans since 1st January, 1853, including $100,000 to Hempfield railroad	173,000 00
	7,682,200 00

Per Contra.

Gas sinking fund	$482,582 89	
Do. contingent fund	293,249 59	
City sinking fund	606,336 36	
Increase do., 1853	30,000 00	
Penna. R. R. stock	4,000,000 00	
Hempfield do	100,000 00	
Gas Works	1,409,940 03	
126 City railroad income, $10,000	100,000 00	
		7,022,108 87
Apparent balance against the city		660,091 83

But the following income is to be taken into account:

		Per annum.
Water rents	$158,000	
Deduct permanent expenses of water works	28,500	
		$129,500 00
Market rents		35,000 00
Rents of city property		34,000 00
Rents of tobacco warehouses		9,000 00
		207,500 00
Representing a capital of—		3,458,333 83

There are, besides these, the unproductive landings at the ends of the streets on the Schuylkill, the four public squares, Independence square and Pratt's garden, which would make a beautiful summer resort for our fellow citizens.

These grounds, the Fairmount works, and the Girard College, are all beyond the present city limits, and to the north of it, whilst the city, as the trustee of the Girard estate, own property in the city proper, and north and south of it.

The area is 1,402½ acres, divided into seventeen wards, all of which are sub-divided into precincts.

The taxables are 22,024, and the assessed value of real estate, $66,497,465. Occupations, $646,625. Furniture, $1,622,500. Money at interest, stocks, and debts, $18,311,241.

SOUTHWARK.

The district of Southwark, was originally laid out under an act of the 26th of March, 1762, and public landings were purchased under acts of 15th April and 20th of September, 1782, and under an act of the 29th September, 1787, and a supplement thereto, a plan for the streets in said district and for certain roads in the townships
127 of Moyamensing and Passyunk, was reported to the supreme executive council and adopted by them (with the exception of Mead alley) on the 5th of January, 1790. By these acts various police powers were exercised by the assessors, surveyors, or regulators of streets, and the supervisors of the highways, which last were for special purposes erected into a body politic and corporate.

The legislature, however, finally, on the 18th April, 1794, created the inhabitants of Southwark a corporation, by the name of "The commissioners and inhabitants of the district of Southwark," and invested them with the usual municipal powers.

The funded debt of the district is—

Five per cents	$158,350
Six per cents	256,550
	414,900

The value of the corporate property is $178,417. The income from it is $8,000. The floating unfunded debt of the district is about $20,000. The area is 508½ acres, divided into six wards. The taxables are 8,193, and the assessed value of real estate, $6,036,047.

The executive and legislative power is vested in a single board of commissioners of 18 members, one third elected annually in the different wards, at the constables election in March. The representation in this body is of wards, each ward electing one commissioner every year.

NORTHERN LIBERTIES.

On the 9th March, 1771, regulators were appointed in the Northern Liberties, and under subsequent acts surveys or plans were made of the streets north and south of the Cohocksink creek, and on the 28th March, 1803, an act was passed to incorporate that part of
128 the township of the Northern Liberties lying between Sixth street and the Delaware, and Vine street and the Cohocksink, which was repealed and supplied by the act of the 16th March, 1819.

The area is 320 acres, divided into seven wards, which are subdivided into election precincts; taxables, 9,130, and the assessed value of real estate, $9,637,466.

The funded debt of the district is—

Six per cents	$307,900 00
Five per cents	37,840 00
Pennsylvania railroad loan	500,000 00
	845,700 00
The property of the district consists of Pennsylvania railroad stock	500,000 00
	345,700 00
Also, their interest in Schuylkill Water works, gross income	$35,000 00
Market houses, gross income	10,000 00
Public landings, income	12,000 00
Real estate, income	400 00
	57,400 00

Besides that used by the corporation.

The executive and legislative power is vested in a single board of commissioners of 21 members, one-third elected annually by general ticket, with a nominal head to the corporation, under the title of mayor, also elected annually.

SPRING GARDEN.

On the 22d March, 1813, the inhabitants of Penn township, between the middle of Sixth and Broad and Vine streets, and Hickory lane, or Coates street, were incorporated by the name of "The commissioners of the district of Spring Garden," and by a supple-
129 ment passed 2d March, 1829, the bounds were extended to the Schuylkill, and 200 feet north of Poplar lane.

The area is 1,100 acres, divided into seven wards. The taxables 12,813, and the assessed value of real estate, $15,128,817.

The funded debt of the district is—

6 per cents	$1,673,500 00
5 " "	148,500 00
	1,822,000 00

The corporate property is—

Pennsylvania railroad stock	$500,000 00
Gas works, cost	334,967 19
Market houses, cost	39,821 83
Hall, lot west of hall, and sundry other property, cost	241,303 44
Water works, cost	124,270 09
	1,240,362 55

Besides registered taxes, claims, and debts, &c.....	$240,119 17
The gross income for 1853 from gas, was.....	71,441 41
" " " market rents.....	7,896 00
" " " public landings.....	287 50
" " " water rents	47,935 40

The legislative and executive power is vested in a single board of commissioners of 21 members, one-third elected annually by separate ticket.

Kensington.

Kensington was incorporated on the 6th March, 1820, and by the addition of the Fair Hill district, contains 1,288 acres, divided into eight wards.

The taxables were in 1853.....	11,563
And the assessed value of real estate.....	$7,148,502

130 The funded debt consisted, in January, 1853—

Of 5 per cent. loans.....	$65,716 17
Of 6 " "	269,022 52
Of 6 " water works loan.....	259,441 35
	591,180 04

The corporate property is—

Water works.....	$274,566 32
Real estate.....	41,443 80
	316,010 12

The income from market houses is $2,005 15, representing a capital of $33,419 17; and the income from public landings is $362, being 6 per cent. interest on $6,033 33. The legislative and executive power is vested in a board of commissioners of 24 members, one-third annually elected by general ticket.

Moyamensing.

Moyamensing was incorporated by an act of 24th of March, 1812, which has been supplied by the act of 24th March, 1842, and has been changed by the act of the 5th of April, 1848, to "The commissioners and inhabitants of the district of Moyamensing."

The area is 1,486 acres, divided into five wards.

The taxables are.....	6,153
And the assessed value of real estate.....	$3,838,791

The funded debt of the district is—

5 per cents	$62,493 15
5½ do.	9,000 00
6 do.	46,850 00
	118,343 15

The corporate property of the district consist of hall, real estate, value $41,500.

The legislative and executive power is vested in a single board of commissioners of fifteen members, one-third elected annually by general ticket.

131 PENN.

The district of Penn was incorporated on the 28th of February, 1844.

It has taxables	2,658
And the assessed value of real estate is	$3,523,632

The funded debt of the district is—

6 per cents	$237,000 00
The corporate property consists of hall and lot, 10th and Thompson streets	4,000 00
Lot, Schuylkill, 5th and Master streets	23,000 00
Market houses cost	20,000 00
The unfunded debt is	6,000 00

The executive and legislative power of the district is vested in a board of commissioners, one-third elected annually at the constable's election in March.

RICHMOND.

The district of Richmond was incorporated on the 27th February, 1847, and has 1,873 taxables, and the assessed value of real estate is $2,756,995 00

The funded debt of the district is—

6 per cent. loan	220,000 00

The corporate property consists of landings, market houses, docks, and hall, valued at	100,000 00
Debts for paving, &c	24,500 00
Registered taxes	3,500 00
	128,000 00

The executive and legislative powers of the district is vested in a single board of commissioners, one-third elected annually by general ticket.

WEST PHILADELPHIA.

The borough of West Philadelphia was incorporated by an act of assembly of the 17th February, 1844, and by act of 3d April, 1851, was changed into a district, with the title "The district of West Philadelphia." It has 1,436 taxables, and the assessed value of real estate is $2,052,195.

132 The funded debt is—

Ordinary loan, 6 per cent	$112,000
Gas loan, do	35,000
Water loan, do	120,000
	267,000

The corporate property is—

Lot at water works	$8,000
Lot for stand pipe	6,000
Hall and lot	25,000
Gas works	35,000
Water works (at cost)	108,000
Water pipe included in loan of $120,000, to be paid for by owners of property	30,000
District liens, &c	7,000
	219,000

The income upon the corporate estate cannot be stated until the water works are completed.

The gas works yielded last year 8 per centum on the cost. The corporation tax, 55 cents, yielded in 1853, $11,000; in 1854 it is estimated at $14,000.

The value of assessed property is increasing so rapidly in the district that the corporation tax at the same rate will soon produce double the amount. The area of the district is nearly twice the surface of the city proper. The executive and legislative power of the district is vested in a president of the board with the powers of burgess, and twelve commissioners elected separately in wards, four to each ward, for two years.

ARAMINGO.

The borough of Aramingo (formerly Doverville) was incorporated on the 11th of April, 1850, with all the municipal powers of a district.

It is governed by a board of commissioners, and authorized to levy a loan on real estate not exceeding three mills on the dollar for borough purposes.

133 BELMONT.

The district of Belmont was incorporated April 14th, 1863, with the corporate title of "The commissioners and inhabitants of the district of Belmont."

It is governed by a board of commissioners, who are authorized to levy a tax on real estate not exceeding one-half of one per cent. The district owes no funded debt.

The boroughs of Manayunk, Germantown, Frankford, Whitehall, and Bridesburg are governed by town councils, with authority to levy taxes on real estate.

The funded debt of the borough of Frankford is $20,000. The value of the corporate property of the borough is $16,000; the income derived from the parts rented is $200. The borough is about erecting gas works and laying gas pipes for the purpose of supplying Frankford and Aramingo with gas, the cost of which will be about $25,000.

The funded debt of the borough of Bridesburg is $2,500; the corporate property is about equal in value to the debt. The remaining portion of the county are townships, and are, with little variation, regulated by the general township laws.

These make eleven distinct municipal corporations within a portion only of the proposed limits, the earliest beginning as far back as 1701, and the last created in 1853, to which are to be added five boroughs, all vested with the power to tax, making thus far sixteen governments.

But besides all these municipal corporations there is another corporation, called "The guardians for the relief and employment of the poor of the city of Philadelphia, the district of Southwark, and the townships of Northern Liberties and Penn," which has
134 taxing powers uncontrolled by any other body, with a large and valuable real estate under its charge.

The poor tax raised in the city and districts included in the present jurisdiction of the guardians of the poor for 1853 are assessed (on real estate) at 20 cents on $100, and amounted to $251,829 94.

The corporation property of the board of guardians is—

Blockley farm cost	$51,761 81
Cost of almshouse	859,743 84
Ground rents, State loan, and Schl. Navigation and Lehigh stock	23,520 47
Seventh street estate cost, subject to ground rent	2,000 00
	937,026 12
The loan due by the guardians is	642,904 04

The board of guardians is composed of 18 members. The board of health consists by the present law of 18 members. It owes no funded or other debt. Their property consists principally of real

estate, used for public sanitary purposes, and not productive. The income of the corporation is fluctuating, depending mainly on fees on vessels and passengers, permits for removing nuisances, and the like. From these resources the board pay the expenses of keeping up their establishment, including the salaries of officers appointed under existing acts of assembly.

The board of county commissioners (three in number) controlled by a county board, consisting of the senators and representatives of the city and county for the time being, exercise powers of a local government, and, among other powers, that of taxing real and personal property and persons. Their debt is large, owing to the operation of the law awarding damages for the opening of streets,
135 out of the county treasury, and that portion of the public debt always will be on the increase until the law of New York is adopted which lays these damages upon the owners of land who are benefited by the new highway.

The funded debt of the county, July 1, 1853, was—

Five per cents	$1,195,900 09
Six per cents	934,533 33
One per cents	74 60
	2,130,508 02
The county sinking fund is	272,552 91

By adding these debts together we obtain the aggregate amount of the consolidated debt of the new city of Philadelphia. This consolidated city debt will be $14,961,735 25, as follows, viz:

Funded debts of city and districts, &c.:

City	$7,682,200 00
County	2,130,508 02
Southwark	414,900 00
Northern Liberties	845,700 00
Spring Garden	1,822,000 00
Kensington	591,180 04
Moyamensing	118,343 15
Penn	247,000 00
Richmond	220,000 00
West Philadelphia	257,000 00
Guardians of the poor	642,904 04
Frankford	20,000 00
Bridesburg	2,500 00
Total	14,984,235 25

This total is large, but it should be remembered that the sinking fund and contingent fund of the city gas works, and the sinking fund of the city and of the county is.. $1,684,721 71
Railroad stock of the city and N. Liberties..... 4,600,000 00
Gas works of the city..... 1,409,940 03
136 The water works of the city, Northern Liberties, Spring Garden, and Kensington produce an income of about $230,000, being an interest at 6 per cent. of our $3,500,000; cost about..... 2,500,000 00
Spring Garden gas works and railroad stock..... 834,967 19

11,029,628 93

Besides all the other corporate property hereinbefore mentioned.

Any apprehension, therefore, on the part of the outer or any other districts that the interest on the public debt will require severe taxation to meet it, is groundless; for it must be obvious to any observer that a capitalist who would take upon himself the public debt and public property would be enriched by the operation, and it is one of the prominent intentions of the bill that the corporation incomes shall be appropriated to the interest.

The board of comptrollers of the public schools own a large real estate, value at cost $932,290, which is used for the purposes of instruction, and is, of course, unproductive.

By an act of assembly passed April 8th, 1853, the board is authorized "to report to the county commissioners annually, on or before the first day of May, the amount of money which they may deem necessary to defray the expenses of the district for the current year."

And the county commissioners "shall ascertain the per centum upon the amount of the county assessment, which will produce the sum required by the comptrollers," and deliver duplicates to the collectors of taxes.

137 The collectors are required to pay the tax so ordered by the comptrollers to the county treasurer, who shall keep the same distinct from the county funds, and pay out the same on the orders of the comptrollers; by this act, which has taken the public by surprise, the board of comptrollers possess the right to tax property at their discretion. On the 29th April, 1853, the board informed the county commissioners that they required for the support of the public schools the sum of..... $414,260
Commissions for collection, and allowance in anticipation of payment..... 35,640

$449,900

Thereupon the county commissioners, as required by the act, assessed a school tax of 30 cents on the $100, on real estate and personal property $451,260
The aggregate assessed value of real and personal estate in the school district being 150,420,821

This interesting branch of the public government is in a prosperous condition. The following statement comparing its condition for the year ending June 30th, 1852, and June 30th, 1853, will exhibit a satisfactory increase of usefulness:

	SCHOOLS.							TEACHERS.			SCHOLARS.		
	High.	Normal.	Grammar.	Secondary.	Primary.	Unclassified.	Total.	Male.	Female.	Total.	Male.	Female.	Total.
1852.....	1	51	54	34	149	40	279	83	741	824	26,034	23,601	49,635
1853.....	1	1	55	35	152	42	289	80	760	840	25,836	24,249	50,085

	1852.	1853.
Number of directors	231	237
Number of comptrollers	24	24

The increase of schools is 7; of teachers 16; of scholars 450. Total scholars 50,085. Amount of tax, including commis-
138 sion and allowances, $451,260; making an average of about $9 per year for each scholar, excluding interest on cost of school houses.

The cost of supporting the high school with 512 pupils is $17,449 52, or $32 97 for each pupil. The cost of supporting the normal school and school of practice, with 519 pupils, is $5,796 72 or $10 98 for each pupil.

The assessed value of real and personal property in the city and county of Philadelphia, is as follows:

Real estate	$128,218,658
Occupations	2,240,871
Furniture	1,919,590
Money at interest, stock, loans, and debts	21,955,269
Emoluments of office	130,825
Horses and cows	500,581
Carriages	194,868
Watches	6,288
Total	155,260,662

The total amount of taxes assessed in the city and county for 1853, for State, county, corporation, borough, and township purposes was $2,469,760.

It was difficult to state with precision the amount of commissions paid to tax collectors.

By the last report of the county commissioners, p. 42, it appears that on the county tax of 1852, of $973,827 12, the commissions paid to the tax collectors were $42,717 03. Assuming this as a fair average, a proximate result very near the truth may be arrived at, by stating, that the commissions on the total of $2,469,760 for 1853, will average 41-10 per cent., amounting to $101,260 16.

The taxes levied on real and personal estate in the city and county in 1853, were as follows:

139 In the city, the county tax is 40 cents in $100 of the assessed value. State tax 30 cents, school 30 cents, poor 20 cents, corporation 58 cents.

The same rate of county, State, school, and poor tax is collected in the Northern Liberties, Spring Garden, Kensington, Southwark, Moyamensing, Penn, North Penn, West Philadelphia, Richmond, Bridesburg, and unincorporated Northern Liberties, and the same county and State tax in the rest of the county. In the Northern Liberties, the corporation tax was 31 cents on real estate only; in Spring Garden, 50 cents; in Kensington, 60 cents, and 8 cents per year per foot for gas pipes; in Southwark, on real estate only, 85 cts.; in Moyamensing, 95 cts.; in Penn district, 50 cts., and 20 cts. watch and lamp tax; in West Philadelphia, 55 cts.; Richmond, 60 cts.; Belmont, 30 cts.; Araming, 15 cts.; in Passyunk, road tax, 48 cents, poor, 20 cents; in Kingsessing, road tax, 30 cents, poor, 20 cents; in Blockley, road tax, 23 cents, poor, 13 cents; in North Penn, road tax, 18 cents, poor, 15 cents; in Roxborough, poor tax, 15 cents, road tax, 10 cents; in Manayunk, borough tax, 35 cents, poor tax, 20 cents; in Germantown, borough tax, 40 cents, poor, 18 cents; in Bristol, poor tax, 18 cents; in unincorporated Northern Liberties, road tax, 25 cents; in Bridesburg, borough tax, 30 cents, poor, 20 cents; in Frankford, borough tax, 85 cents, poor 7 cents; in Oxford, road tax, 17 cents, poor, 7 cents; in Lower Dublin, poor tax, 7 cents, road tax, 12 cents; in Byberry, road and poor tax, 20 cents each; in Whitehall, 15 cents; in Moreland, road and poor tax, 20 cents each.

The borough of Germantown owns in real estate the poor house property, value $20,000, and a lot of ground, 300 feet by 100, not productive.

Lower Dublin, Frankford, and Oxford, own in real estate,
140 the alms house property, value $15,000. The only real estate of the borough of Manayunk is the poor house and farm, value over the mortgage, $7,000.

Roxborough owns the poor house and farm attached to it, valued at $8,000 and mortgaged for $3,000.

It will be seen from the preceding data that the city of Philadelphia is cut up into eleven municipalities; and that there must be added to this deplorable catalogue of jurisdictions five suburban boroughs, exercising municipal powers independent of control, together with the three supplemental corporate bodies which impose upon the citizen the poor, the county, and the school tax.

Instead of one municipal body or corporation governing, as it ought, the whole of the metropolis of eastern Pennsylvania, it is separated, by imaginary lines, into eleven distinct jurisdictions, of various powers, of discordant and different laws, governed by dissimilar bodies elected at different periods, and varying in size and population from 4,186 acres and 125,020 inhabitants, down to 150 acres and 1,500 souls.

This cannot be just or expedient. The same population, with the same interest, on the same plot of ground, and forming, to the eye of the stranger, the second great city in America, ought unquestionably to have the same government, the same laws, and the same police. This is the clear right of its citizens; and the legislature, for their sake, and for the general interests of the State at large, should at once place all its inhabitants under the charge of one municipal corporation, obliterating by a single act of its power those artifi-
141 cial distinctions which have produced all the evils of conflicting jurisdiction and prejudices; and at one period led to the shedding of blood and the practical imposition of a voluntary martial law. All these forms of legislative action cannot be equally good. Either the two separate bodies, like a senate and house of representatives, or the single body of commissioners or town council, like the old discarded assemby of the constitution of 1776, must be the best fitted for municipal rule. So as to the executive power; either it should be reposed in one man, called a mayor, or it should be united with the legislative authority in a single body, varying in number from five to twenty-four.

Whichever form is the best should be applied to all. Now it is clear that the single body of commissioners clothed with both legislative and executive authority, has always been considered as an imperfect form of city government, adapted only to small districts, and for an incipient state only. It is not suited to a great city, requiring a vigorous and united government, where the energies of a large population should be directed to the peace, safety, and happiness of all. It appears, therefore, that sound policy dictates that the whole of Philadelphia should be united under one municipal government with an executive head, to be called a mayor, whilst the legislative power should be vested in a select and common council, elected by the respective wards and not by a general ticket, so that all parties may be represented according to their numbers.

At present, including the county, the guardians of the poor,
142 the comptrollers of public schools, and five suburban boroughs, there are nineteen distinct corporations, with that number of distinct set of taxes, collected by distinct sets of tax collectors, and with at least twelve distinct debts. Ten of these corporations have, in their legislative management one hundred and seventy-seven persons, consisting of select and common councilmen, town council commissioners, and members of the county board, all of which will be dispensed with on the plan of consolidation, and be replaced by two bodies of citizens, chosen by, and amenable to, the electors of the different wards. This change will secure only one set of or-

dinances for the government and regulation of the good people of Philadelphia, easily learned and known by all, instead of distinct codes of municipal laws, varying according to the prejudices and passions of each municipality, and really inaccessible to the citizen. The same corporate unity dispenses with a multitude of treasurers, solicitors, clerks, superintendents, or their equivalent, besides hosts of subordinates. It dispenses with one hundred and sixty-eight tax collectors, and will cause a saving in this item alone of one hundred thousand dollars per year.

It creates, instead of numerous different sets of debts of varying value and uncertain credit, one consolidated city debt of the same value and undoubted credit, and replaces at least twelve different sets of books by one set kept in the simplest form.

Your memorialist will not enter into an analysis or explanation of the provisions of the bill herewith submitted. They speak
143 for themselves. It is believed that they comprehend every subject necessary to be considered by the legislature in providing for consolidation.

The bill does not contemplate the contingency of a popular vote on the main question of consolidation, and this for reasons that will, doubtless, be as satisfying to your honorable bodies as they are to your memorialists. If a single doubt rested upon the question such a provision would be wise, but so general and unmistakable have been the evidences of the popular will in favor of the measure, that a vote of the people is entirely unnecessary to decide a point which has already been conclusively settled beyond all reasonable doubt, while the fruitless appeal would burden the county treasury with the expense of a special election of over $20,000.

Each and every one of the three political parties into which the people of Philadelphia are divided, have, by their organized conventions, over and over again declared in favor of consolidation. It would, therefore, be but a prolongation of the evils which the proposed law is intended to remedy to postpone this great and beneficial measure for that or any other reason whatever. With a view to shed light upon the subject embraced in the second section of the bill, your memorialist annex a detailed statement of the taxables in the city and county.

Your memorialist, with abiding faith in the wisdom, necessity, and importance of consolidation, submit it to you for your final action.

(Signed) MORTON McMICHAEL,
Chairman.

(Signed) GEORGE NORTHROP,
Secretary.

144 Enumeration of taxable inhabitants for the year 1853 in the wards, districts, townships, &c., in the city and county of Philadelphia.

City:

North Mulberry ward	2,210
South Mulberry ward	1,734
North ward	2,351
South ward	1,210
Locust ward	1,861
Middle ward	1,478
Lombard ward	1,138
Spruce ward	819
Cedar ward	2,054
New Market ward	1,253
Pine ward	922
Dock ward	1,055
Walnut ward	398
Chestnut ward	476
High Street ward	656
Lower Delaware ward	1,121
Upper Delaware ward	1,288
	22,024

Northern Liberties:

First ward	758
Second ward	816
Third ward	1,128
Fourth ward	968
Fifth ward	1,539
Sixth ward	1,590
Seventh ward	2,331
	9,130

Spring Garden:

First ward	1,250
Second ward	1,407
Third ward	2,917
145 Fourth ward	1,181
Fifth ward	2,066
Sixth ward	2,188
Seventh ward	1,804
	12,813

Kensington:

First ward	1,076
Second ward	1,151
Third ward	2,447
Fourth ward	1,170
Fifth ward	1,850
Sixth ward	1,892
Seventh ward	1,357
Eighth ward	620
	11,563

Southwark:

First ward	1,674
Second ward	1,414
Third ward	1,044
Fourth ward	1,473
Fifth ward	1,302
Sixth ward	1,286
	8,193

Moyamensing:

First ward	1,120
Second ward	1,463
Third ward	1,501
Fourth ward	1,036
Fifth ward	1,033
	6,153

District of Penn:

First ward	1,270
Second ward	943
Third ward	445
	2,658

146 West Philadelphia:

First ward	699
Second ward	468
Third ward	271
	1,438

Townships and boroughs:

Passyunk	335
Kingsessing	500
Blockley*	804
North Penn	701
Roxborough	716
Manayunk upper ward	687
Manayunk lower ward	643
Germantown borough	1,679
Upper ward, Germantown	529
Bristol	501
Unincorp, Northern Liberties†	611
Bridesburg	259
Frankford borough	1,270
Oxford	492
Lower Dublin‡	1,017
Byberry	239
Moreland	115
Richmond	1,873
	12,971

Recapitulation:

City	22,024
Northern Liberties	9,130
Spring Garden	12,813
Kensington	11,563
Southwark	8,193
Moyamensing	6,153
District of Penn	2,658
West Philadelphia	1,438
Townships and borough	12,971
Total	86,943

147 And which was accompanied by a draft of a proposed bill for consolidating the municipalities of the county of Philadelphia, of which the following is a true copy, and shall be used as given in evidence:

148 *Index.*

SECT. 1. Corporate name and boundaries of the city of Philadelphia.
2. Boundaries of the wards.
3. Boundaries of the election divisions.

* Including Belmont.
† Including Aramingo.
‡ Including Delaware.

Of public officers:

SECT. 4. The councils.
5. Their organization.
6. Its effect.
7. Mayor.
8. Marshal of police.
9. Appointment of policemen, watchmen, &c.
10. City treasurer.
11. Receiver of taxes.
12. City controller.
13. City commissioner.
14. Supervisors.
15. City solicitor.
16. Board of health.
17. Assessors.
18. Guardians of the poor.
19. Their organization.
20. Directors of public schools.
21. Their organization.
22. Controllers of public schools.
23. Their organization.
24. Aldermen.
25. Members of Congress, of the senate and assembly.
26. Constables.
27. Surveyors and regulators.
28. Port wardens.

Elections:

SECT. 29. Duties of sheriff and county commissioners.
30. Opening and closing, &c.
31. Regulates first election as to officers.
32. Provides for immediate means of information of results of election.
33. Returns of election.
34. Returns of election.
35. Of contesting the election.
36. Extends terms of officers till June election.

General provisions:

SECT. 37. Vests estates of districts, &c., in city.
38. Public debt, interest thereon, loans, &c.
39. Fiscal year and estimates of guardians of poor, &c.
40. Paving, &c.
149 41. Powers of county commissioners and county board vested in city, &c.
42. Police and fire department.
43. Office of tax collector abolished.
44. Existing laws continued until repealed.
45. Of impeachment and removal from office.

SECT. 46. Compensation of offices and filling vacancies.
47. Salaries not to be increased or reduced during term of office.
48. Incompatible officers.
49. Surety and oath of office.
50. Councils to regulate departments.
51. No officer, clerk, &c., to be interested in contracts.
52. Citizens not to be disqualified as witnesses or jurors.
53. To sit with open doors.

150 A further supplement to an act entitled "An act to incorporate the city of Philadelphia."

SECT. 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and it is hereby enacted by the authority of the same, that the corporate name of the mayor, aldermen, and citizens of Philadelphia shall be changed to "The city of Philadelphia," and the boundaries of the said city shall be extended so as to embrace the whole of the territory of the county of Philadelphia, and all the powers of the said corporation, as enlarged and modified by this act, shall be exercised and have effect within the said county, and over the inhabitants thereof.

SECT. 2. The said city shall be divided into wards, as follows, to wit:

First ward. That part thereof bounded as follows: beginning at Wharton street and the river Delaware; thence along Wharton street to Passyunk road; thence along the Passyunk road to Little Washington street; thence along Washington to Broad street; thence along Broad street to South street; thence along South street to the river Schuylkill; thence along the river Schuylkill to its junction with the river Delaware; thence along the river Delaware to the place of beginning, together with League island.

Second ward. That part therteof lying between Broad street and the river Delaware, and between the lines of aforesaid first
151 ward and Christian street.

Third ward. That part thereof lying between Broad street and the river Delaware, and between Christian street on the south, and Fitzwater, German, and Mead streets on the north.

Fourth ward. That part thereof lying between Broad street and the river Delaware, and between the north line of aforesaid third ward and South street.

Fifth ward. That part thereof lying between Seventh and the river Delaware, and between South street and Chestnut street, including Windmill island.

Sixth ward. That part thereof lying between Seventh street and the river Delaware, and between Chestnut street and Vine street.

Seventh Ward. That part thereof lying between Seventh street and the river Schuylkill, and between South street and Spruce street.

Eighth ward. That part thereof lying between Seventh street and the river Schuylkill, and between Spruce street and Chestnut street.

Ninth ward. That part thereof lying between Seventh street and the river Schuylkill, and between Chestnut street and Arch street.

Tenth ward. That part thereof lying between Seventh street and the river Schuylkill, and between Arch street and Vine street.

Eleventh ward. That part thereof lying between Third street and the river Delaware, and between Vine street and Poplar street.

Twelfth ward. That part thereof lying between Sixth street and Third street, and between Vine street and Poplar street.

Thirteenth ward. That part thereof lying between Sixth street and Tenth street, and between Vine street and Poplar street.

152 Fourteenth ward. That part thereof lying between Tenth street and Broad street, and between Vine street and Poplar street.

Fifteenth ward. That part thereof lying between Broad street and the river Schuylkill, and between Vine street and Poplar street.

Sixteenth ward. That part thereof bounded as follows: beginning at Maiden street and the river Delaware; thence along Maiden street to the Frankford road; thence along the Frankford road to Franklin avenue; thence along Franklin avenue to Sixth street; thence along Sixth street to Poplar street; thence along Poplar street to the river Delaware; thence along the river Delaware to the place of beginning.

Seventeenth ward. That part thereof bounded on the north by Oxford street, on the east by Frankford road, on the south by Franklin avenue, and on the west by Sixth street.

Eighteenth ward. That part thereof bounded as follows: beginning at Maiden street and the Delaware river; thence along Maiden street to Frankford road; thence along the Frankford road to Norris street; thence along Norris street to the river Delaware; thence along the river Delaware to the place of beginning.

Nineteenth ward. That part thereof bounded as follows: beginning at Norris street and the Delaware river; thence along Norris street to the Frankford road; thence along the Frankford road to Oxford street; thence along Oxford street to Sixth street; thence along Sixth street to Lehigh avenue; thence along Lehigh avenue to the Frankford road; thence along the Frankford road to Westmore-

153 land street; thence along Westmoreland street to the Point road; thence along the Point road to the northeast boundary of the district of Richmond; thence along the same to the river Delaware; thence along the river Delaware to the place of beginning.

Twentieth ward. That part thereof bounded as follows: beginning at Poplar street and the river Schuylkill; thence along the said Poplar street to Sixth street; thence along the said Sixth street to Susquehanna avenue; thence along the said Susquehanna avenue to Eleventh street; thence along the said Eleventh street to Montgomery street; thence along the said Montgomery street to the river Schuylkill; thence along the same to the place of beginning.

Twenty-first ward. That part thereof lying within the present bounds of the borough of Manayunk and the townships of Roxborough and Penn, and the southern boundary thereof shall be as follows: beginning at Montgomery street and the river Schuylkill; thence along Montgomery street to Eleventh street; thence along Eleventh street

to Susquehanna avenue; thence along Susquehanna avenue to Germantown road.

Twenty-second ward. That part thereof lying within the present bounds of the townships of Germantown and Bristol, and the borough of Germantown.

Twenty-third ward. That part thereof including all the remainder of the present county of Philadelphia east of the river Schuylkill. The said ward shall be entitled to elect four members of the common council, by separate ticket, as follows: One member shall be elected by the qualified voters of the unincorporated Northern Liberties, Aramingo, and Bridesbury; one by the qualified voters of
154 Frankford and Whitehall; one member *one member* by the qualified voters of Oxford and Lower Dublin; one by the qualified voters of Delaware, Moreland, and Byberry.

Twenty-fourth ward. That part of the county of Philadelphia lying west of the river Schuylkill.

Provided, That whenever a street, road, avenue, or river is named as a boundary in this section, the centre thereof shall be understood.

Each of said wards, with the exception of the Seventeenth and Twenty-third, shall, at the municipal election in 1854, elect three members of the common council. The Seventeenth ward shall, at said election, elect four members by general ticket; and the twenty-third ward shall, at said election, elect four members as hereinbefore provided.

The qualified voters of each of the aforesaid wards in the said city, shall, at the municipal elections in said city in the year 1855, and annually thereafter, be entitled to elect one member of the common council for every twelve hundred taxable inhabitants, and one for every fraction of six hundred or more of such taxables of said ward, according to the enumeration of taxables made in the preceding year, provided that no ward shall have less than three common councilmen.

And it shall be the duty of the sheriff of the county of Philadelphia, in his proclamation for every municipal election in the year 1855, and thereafter, to state the number of members of the common council which the qualified voters of each of the said wards
155 shall be entitled to elect as aforesaid.

SECT. 3. On or before the first Monday in May, one thousand eight hundred and fifty-four, the commissioners of the county of Philadelphia (and thereafter the city councils) shall lay out and establish a sufficient number, not less than six, election divisions in each of the wards established by the second section of this act, which division shall be, whenever practicable, bounded on all sides by streets, lanes, roads, alleys, avenues, streams of water, or by one of the boundary lines of said city, and shall be as nearly equal in number of taxable inhabitants as such boundaries will admit of, and shall be numbered respectively one, two, three, four, and so on.

The said commissioners and the said councils, when they establish the same, shall make an accurate description thereof, and cause it to be published in one or more daily papers of the city of Philadelphia,

and shall file a copy of such description in the office of the clerk of the court of quarter sessions of the county of Philadelphia to be and remain on record in said office; and if at any election thereafter there shall be more than four hundred votes polled in any of the said divisions, then at some period, at least forty days previous to the next succeeding election, the city councils shall re-arrange the divisions of the ward or wards wherein such vote has been polled, and increase the number thereof if necessary.

SECT. 4. The legislative powers of the said city shall be vested in two bodies, to be called the select and common councils; the select council shall consist of one member from each ward, who shall
156 have the same qualifications as are required by the constitution of this Commonwealth for members of the senate, and shall be elected as follows, to wit: on the first Tuesday in June, 1854, the qualified voters of the first, third, fifth, seventh, ninth, eleventh, thirteenth, fifteenth, seventeenth, nineteenth, twenty-first, and twenty-third wards respectively shall elect one member to serve until the Monday succeeding the first Tuesday of May, 1855; and on the first Tuesday in June, 1854, and in the same manner, the qualified voters of the second, fourth, sixth, eighth, tenth, twelfth, fourteenth, sixteenth, eighteenth, twentieth, twenty-second, and twenty-fourth wards, respectively, shall elect one member to serve until the second Tuesday of May, 1855; and on the first Tuesday in June, 1854, and in the same manner the qualified voters of the second, fourth, sixth, eighth, tenth, twelfth, fourteenth, sixteenth, eighteenth, twentieth, twenty-second, and twenty-fourth wards, respectively, shall elect one member to serve until the second Tuesday in May, 1856, and annually thereafter, on the first Tuesday in May, the qualified voters of each ward in which there shall be a vacancy shall elect one member, qualified as aforesaid to serve for two years. The members of the select and common councils shall have the same qualifications as are required by the constitution of this Commonwealth for members for the house of representatives, and shall be elected as follows, to wit: on the first Tuesday in June, 1854, the first election of members of said common council she be held, and the persons then elected shall serve until 10 o'clock on the Monday succeeding the first Tuesday in May, 1855, and on the first Tuesday in May, 1855, and annually thereafter, on the first Tuesday of May, the members of the said common council shall he elected to serve until the first Monday succeeding the first Tuesday in May ensuring their election.

Provided, That no member of the State legislature nor any one holding office or employment from or under the State at the
157 time of said election, shall be eligible as a member of said councils; nor shall any member of said councils, during the term for which he shall be elected, hold any office or employment herein created or provided for of a municipal character.

SECT. 5. The members of the select and common councils, elected on the first Tuesday in June, 1854, shall meet at the City Hall, in said city, at 10 o'clock in the forenoon of the Monday succeeding their election, and shall then and there organize in separate cham-

bers; the members of each council shall each be sworn or affirmed to support the Constitution of the United States and of the Commonwealth of Pennsylvania, and that they will discharge the duties of their office with fidelity; each council shall elect a president and such other officers as may be deemed necessary for the transaction of business, and shall keep a journal of its proceedings, which shall be at all times open to public inspection, and on the Monday succeeding the first Tuesday in May in each year thereafter, the members of council elect shall meet as aforesaid with those whose terms have not expired, and shall take oath of office and enter upon the duties thereof.

SECT. 6. Upon the first organization of the councils provided for in the preceding section, the city of Philadelphia, as established by this act, shall be vested with all the power, rights, privileges, and immunities incident to a municipal corporation, and necessary for the proper government of the same, and those of the present corporation of the mayor, aldermen, and citizens of Philadelphia; and upon the said organization of councils, and upon proclamation
158 made by the mayor by direction of the said city councils, fixing a day therefore not exceeding sixty days after the first Tuesday in July then next, all the powers, rights, privileges, and immunities possessed and enjoyed by the following corporations respectively, and of all officers under them, to wit: The commissioners and inhabitants of the district of Southwark; the commissioners and inhabitants of the incorporated district of the Northern Liberties; the commissioners and inhabitants of the Kensington district; the commissioners of the district of Spring Garden; the commissioners and inhabitants of the district of Moyamensing; the commissioners and inhabitants of the district of Penn; the commissioners and inhabitants of the district of Richmond, in the county of Philadelphia, and of the districts of West Philadelphia and Belmont, of the boroughs of Manayunk, Germantown, Frankford, Whitehall, Bridesburg, and Aramingo, and of the townships of Passyunk, Kingsessing, Blockley, Roxborough, Germantown, Bristol, Oxford, Lower Dublin, Moreland, Byberry, Northern Liberties, Delaware, and Penn; also of the board of police of the police district; the present mayor and councilmen of the city of Philadelphia; the commissioners of the county of Philadelphia; the treasurer and auditors thereof; the county board; the commissioners of the sinking fund, and the supervisors of townships, shall cease and terminate, except so much thereof as may be necessary to enable the city of Philadelphia, as established by this act, to collect the outstanding debts and make a full and complete settlement of the affairs thereof: *Provided*, That all treasurers,
159 police, and other officers of the aforesaid corporations, county, and townships, shall continue to discharge the duties of their respective offices until superseded or dismissed by the authority of the city of Philadelphia, and be accountable as officers holding office under said city, and shall account for all moneys in their hands through the auditor, and make payment to the treasurer of said city: *And provided*, That no corporation hereby superseded or whose estates may by force of this act be vested in the city of Philadelphia,

shall, at any time after the passage of this act, contract any loan or debt other than for the ordinary supplies, repairs, and payment of labor and salaries.

SECT. 7. The qualified voters of the city of Philadelphia shall, on the first Tuesday in June, eighteen hundred and fifty-four, and the first Tuesday in May, in every second year thereafter, elect one person to serve as mayor of the said city by a plurality of votes, and, in case of a tie, the council shall order a new election.

He shall serve for two years, and until his successor shall be duly elected and qualified.

He shall be at least thirty years of age, a a citizen of the United States, and have resided seven years next preceding his election within this Commonwealth, and the last two years thereof in said city. He shall take the usual oath of office in presence of the councils, to be administered by one of the judges of the courts in said city, at twelve o'clock noon, on the Tuesday next succeeding his election; besides the powers conferred by law, he shall have the like power and authority as the sheriff of the county of Philadelphia now
160 has, for the suppression of any riot, disturbance, and violation of law, and shall exercise the authority of making the requisition for the commanding officer of the military in lieu of the marshal of police, as now authorized by law, and of dismissing all police officers and watchmen, other than the marshal of police, for failure in the discharge of duty.

It shall be be the mayor's duty to communicate to councils at least once a year, and oftener if deemed expedient, a general statement of the condition of the city in relation to its government, finances, and improvement, to recommend the adoption of all such measures as he may deem expedient for the security, health, cleanliness, improvement, and welfare of the city; to be vigilant and active in causing the laws and ordinances of the city to be duly executed; for which purposes the marshal of police, all policemen, and watchmen shall obey his orders, and make report to him when acting under his orders, and he shall exercise a constant supervision and control over the conduct of all subordinate officers, and receive and examine all complaints preferred against them, and generally perform all such duties as may be prescribed by the laws and ordinances of said city and of this Commonwealth; and he may call special meetings of the councils whenever any public emergency may require.

Every ordinance, which shall have passed both councils, shall be presented to the mayor.

If he approve, he shall sign it; but if he shall not approve, he shall return it, with his objections to the council in which it originated; which shall proceed to reconsider it.

161 If, after such reconsideration, two-thirds of that council shall agree to pass the ordinance, it shall be sent with the objections to the other council, by which likewise it shall be reconsidered, and, if approved by two-thirds of that council also, it shall be a binding ordinance. In such case the votes of both councils shall be determined by yeas and nays, and the names of members voting shall be entered on the journal.

Every ordinance which the mayor shall not so return within fifteen days, shall take effect as if it had been approved.

The mayor may approve ordinances in vacations of councils, and may call special meetings of councils to reconsider ordinances which he does not approve, on three days' notice to each member. In case of his temporary absence or inability to act, the councils shall appoint a mayor to serve until he shall resume the duties of his office; and whenever a vacancy shall occur in the office of mayor, by death or otherwise, it shall be the duty of the select and common councils, in joint meeting, forthwith to elect, viva voce, a person, qualified as aforesaid, to serve as mayor, who shall continue in office until the Tuesday succeeding the next city election, and until his successor shall have been duly elected and qualified.

The mayor shall receive a salary, to be fixed by councils, which shall not be increased nor diminished during the term for which he shall have been elected.

The police officers, policemen, and watchmen shall receive the compensation to be fixed by ordinance of said councils, and it shall be misdemeanor in office for any of them to receive any other compensation or reward, to be followed by dismissal from service.

162 SECT. 8. The qualified voters of the said city shall, on the first Tuesday of May, 1857, and on the first Tuesday in May in every second year thereafter, elect a marshal of police, who shall receive the salary and do and perform all the duties and exercise the powers now enjoined or conferred upon him by law, except so far as hereby modified, and all such others as may by law or ordinance be enjoined or conferred upon him as chief of the police, and that throughout the entire limits of said city

He shall execute the orders and warrants of the mayor, and make report to him, and have the command of all policemen and watchmen for the preservation of the peace and execution of process, and may suspend them from service and pay until the decision of the mayor be obtained.

And until such election, the present marshal of the police shall continue to hold the office and exercise the powers and perform the duties of marshal of police, as by this act modified.

SECT. 9. The powers conferred by law on the police board of the police district shall be exercised by the city councils. They shall fix the whole number of supervisors of highways, policemen, and watchmen for the service of the whole city. The councilmen for the respective wards shall nominate three times the proportionate number of the whole number of supervisors, and no more, to the mayor, from which nominees the mayor shall appoint the proper number to be the supervisors, taking one of the nominees of the councilmen of the respective wards, and in like manner all vacancies shall be filled.

163 The council shall, in joint meeting and by viva voce vote, appoint all the heads of departments not elective, and shall provide by ordinance for the appointments of clerks and officers, except the mayor's clerk, who shall be appointed by the mayor, and the marshal's clerk, who shall be appointed by the marshal; all

of whom shall serve for such periods as may be fixed by ordinance, subject to dismissal by the appointing power or superior officer, as such ordinance may provide. The head of each department shall nominate and, by and with the advice and consent of the select council, appoint the clerks and officers in his department.

The mayor shall nominate and, by and with the advice and consent of the select council, appoint the policemen and watchmen.

SECT. 10. The qualified voters of the said city shall, on the firs Tuesday in June, 1854, and on the first Tuesday in May, in every second year thereafter, elect a city treasurer, to serve for two years from the first Monday of July next succeeding such election.

He shall give bond to the city, conditioned for the faithful performance of his duty in such amount as the city councils shall direct, and shall, before he enters upon his office, take and subscribe an oath or affirmation honestly to keep and account for all public moneys and property entrusted to his care; and if such treasurer shall knowingly violate said oath, he shall be deemed guilty of perjury, and, on conviction thereof in the proper court, be sentenced to undergo solitary imprisonment at hard labor in the Eastern pentitentiary for the term of not less than one nor more than ten years.

Any vacancy in said office shall be filled by the city councils
164 by viva voce vote, in joint meeting.

No money shall be drawn from the treasury of the city, except the same shall have been previously appropriated by councils to the purpose for which it is drawn; the accounts kept by the said city treasurer shall exhibit all the receipts and all the expenditures of the city in an intelligible manner, in the form of accounts current, in which the particulars of each item of charge and discharge shall fully and precisely appear.

Any citizen may, on the payment of a fee of twelve and a half cents, to be paid to the said city treasurer for the use of the city, inspect the said accounts; and for a further fee of fifty cents, and one cent per line of ten words, to be paid for the use of the city, the treasurer shall, on request of any citizen, furnish a transcript of any part thereof.

It shall be the duty of the councils of the said city to provide, and said treasurer to pay, on or before the 25th day of July, 1856, and in each year thereafter, into the treasury of the State the amount of the State tax assessed within the limits of the said city, deducting all allowances made by law; and said treasurer elected as aforesaid shall, before he enters upon the office, give bond with sureties, to be approved by the judges of the court of common pleas of Philadelphia county, in such sum as they shall direct, conditioned for the safe keeping of, and accounting for, all moneys received by him for the use of the State; the said treasurer shall keep the public moneys in
such a place and manner as the city councils shall direct, and
165 shall verify his cash account at least once every week, to
the satisfaction of a standing committee of councils; and upon the affidavit of a majority of such committee of any default therein, the said treasurer shall be suspended from office until the further ac-

tion of councils; and the court of common pleas of Philadelphia county shall, upon said affidavit and cause shown, forthwith issue a writ of sequestration to the sheriff of the county against such defaulter, for the amount of such default, to be levied of all his property, estate, and effects, in favor of said city, which writ shall be a lien thereon from the issuing thereof, with a clause of attachment contained therein directing the said sheriff to arrest the body of such defaulter, to answer the said charge on a day certain, on which day the said court shall inquire of the premises, and enter judgment thereon as may be just, or in their discretion award an issue to try any disputed facts; and if the said court upon such hearing shall be satisfied that there is probable cause to believe that such treasurer has committed the crime of perjury, as mentioned in this section, it shall be their duty to commit him for trial at the next court of quarter sessions of said county.

SECT. 11. The qualified voters of the said city shall, on the first Tuesday in May, 1856, and biennially thereafter on the first Tuesday in May, elect one person who shall denominated receiver of taxes, to serve for two years; and until a receiver of taxes shall be elected and qualified, the treasurer of the county of Philadelphia, 166 elected on the second Tuesday in October, 1853, shall perform all the duties and be liable to all the obligations and penalties prescribed by this act for said receiver of taxes.

And it shall be lawful for the select and common councils to relieve the said treasurer of the county of Philadelphia from the performance of any duties now imposed by law on said treasurer.

He shall give bond, and be sworn or affirmed to perform his duty in like manner as the city treasurer. He shall collect and receive all taxes and public assessments payable and receivable within the limits of the said city, and for that purpose shall have and exercise all the powers conferred by law in that behalf, and shall have the assistance of the necessary clerks to afford proper facilities to all citizens to pay their taxes at all business hours of the day.

It shall be the duty of the city commissioners to place the duplicates of taxes in the possession of the said receiver of taxes as early as practicable in the year for which the taxes shall be assessed, and the said receiver shall make allowance to all taxpayers who shall pay their taxes in the year for which they are assessed, at the rate of 12 per cent. per annum from the date of payment until the end of such year.

All taxes remaining unpaid on the 1st of January in each year shall continue a lien upon the real estate upon which they are levied in like manner as if registered in the county commissioner's office under existing laws.

167 In case legal proceedings are commenced, there shall be an additional charge of five per centum upon all sums, and the receiver of taxes shall render each day to the city controller an account of each item of his receipts, and daily pay the same into the city treasury.

The said receiver shall cause an agent to attend for him at least

two days in the month of June, and each succeeding month of the year, to receive the taxes owing by persons resident within the wards in which the following places are situated, to wit: at Germantown, Frankford, Manayunk, Bustleton, Holmesburg, Somerton, Hestonville, Haddington, and Paschalville, and give notice of the time and place of attendance, in at least two newspapers not less than three times, one of which papers shall be that in or nearest to the ward where the taxes are owing; and the aldermen in every ward shall be authorized and required at all times to receive the personal taxes of persons resident therein, for which purpose they shall each be furnished with a tax list of such taxes as early in the year as they can be made out, and not later than the first of June in each year, and such aldermen shall receive therefor ten per centum for receiving and paying over such taxes, which they shall do at least once in each month, to the receiver of taxes, or his agents.

And each of said aldermen shall, under the penalty of one hundred dollars to the said city, be in attendance at his office for the purpose of receiving the same, on the day of any election. The said receiver shall, immediately after the first day of December, annually, give public notice in at least four of the public newspapers of said city for ten days, to all persons who shall have omitted to pay
168 their taxes, to pay them before the first day of January, and if not paid by that time, a warrant will issue to collect the same; and it shall be the duty of the receiver to issue his warrants after the fifteenth day of said month of January, directed to any constable of said city or county, commanding him to levy said taxes, with all charges accrued thereon, of any goods or chattels of the delinquent wheresoever found, and to make sale thereof after advertisement, as in cases of distress for rent, which warrants shall be returnable within thirty days.

Provided, That if any person against whom such taxes shall have been assessed shall make affidavit that that he did not own the premises for which such taxes where assessed at the time they accrued and became a lien thereon, the said taxes shall be collected of the true owner thereof, or by proceeding to sell the premises by execution, and the said receiver of taxes shall furnish certificates of all taxes and claims which are a lien on real estate, and receive therefor twenty-five cents for each certificate, and five cents for each lien and claim certified.

SECT. 12. The qualified voters of the city shall, on the first Tuesday in June, 1854. and on the first Tuesday in May in every second year thereafter, elect a city controller, to serve for the term of two years, from the first Monday in July next succeeding his election.

He shall, before entering upon his office, take and subscribe an oath or affirmation faithfully to discharge the duties thereof; and if he shall knowingly violate said oath or affirmation he shall be subject to the same penalty as is provided by the tenth section of this
169 act in regard to the city treasurer.

It shall be the duty of the said city controller to scrutinize, audit, and publish, in two newspapers, annually, verified by his oath or

affirmation, the public accounts of the said city, and of the trusts in their care, exhibiting all the receipts and expenditures of the city, the sources from which the revenues and funds are derived, and in what manner the same have been disbursed, each account to be accompanied by a statement, in detail in separate columns, of the several appropriations made by the city councils; the amount drawn on each appropriation, and the balance standing to the debit or credit of each such appropriation. He shall countersign all warrants on the city treasurer, and shall not suffer any appropriation made by the city councils to be overdrawn, and shall perform all the duties now enjoined by law on the county auditors. He shall superintend the fiscal concerns of the city in such manner, and make reports thereon at such times as shall be prescribed by ordinance.

SECT. 13. The qualified voters of the said city shall, on the first Tuesday in June, 1854, elect three persons, who shall be demoninated city commissioners, one for one year, one for two years, and one for three years, and thereafter on the first Tuesday in May, in each year, the said voters shall elect one city commissioner, whose term shall be three years.

City commissioners, under the direction and control of the city councils, shall be charged with all duties relating to assessors and assessments, to the selection and drawing of jurors, and to
170 elections and election officers, that are now performed by the county commissioners, and all other duties now performed by the commissioners of the county not otherwise provided for in this act. They shall, together with the city treasurer and receiver of taxes, perform the duties of a county board of revision, according to the laws in force in other counties of this Commonwealth, and hear the appeals of the tax payers. And they shall correct all irregularities in valuation, both as respects individual cases and wards, and complete the same before the end of the year in which the valuations shall be made for the tax of the succeeding year.

If, in equalizing the valuation of the property in the several wards, an addition of ten per centum be made to the returns of the assessor for any ward, twenty freeholders of such ward may, by writing, filed within ten days, take an appeal from such decision to the councils, whose decision thereon shall be final.

SECT. 14. The city councils shall annually nominate, and the mayor shall, as hereinbefore provided, appoint the requisite number of supervisors of streets and roads for the different wards, who shall be under the direction and accountable to the commissioners of highways, who shall be appointed by the said councils annually, and whose numbers and duties shall be prescribed by ordinance.

SECT. 15. The select and common councils shall establish a law office, in which shall be deposited and preserved all patents, deeds, wills, leases, mortgages, and other assurances of title, together with all contracts, bonds, notes, official bonds, books, and other evidences of debt belonging to the said city, and all other papers which the said city councils may direct.

The councils shall, by viva voce vote, in joint meeting when

171 organized, and biennially thereafter, elect one person learned in the law to act as solicitor of said city, whose duties shall be prescribed by ordinance, and who shall be allowed to employ such number of assistants as councils may prescribe. The said solicitor shall hold his office for the term of two years, and until his successor shall be duly qualified.

SECT. 16. On the first Tuesday in June, 1854, and on the first Tuesday in May, in every year thereafter, until otherwise provided by law or ordinance, the qualified voters of each of the wards of the said city shall elect one citizen, who shall have and possess the qualications that the members of the senate are required to possess, to serve as a member of the board of health. They shall each take the usual oath of office, and enter upon the duties thereof on the first Monday of July next succeeding their election; the members of the board of health, in the city of Philadelphia, on the morning of the first Monday in July, 1854, and organize themselves into a board, and shall elect a president and such other officers as may be necessary for the proper transaction of the business of the said board; and, upon such organization, shall thereby supersede the present members and officers of the board of health; and thereupon all the estate whatsoever, real, personal, and mixed, that shall then be by law or otherwise vested in or in possession of the board of health, shall be forthwith vested in the city of Philadelphia, subject to all the trusts, conditions, and liabilities now legally applicable thereto, and all laws of this Commonwealth creating, governing, and regulating the board of health, not inconsistent herewith, shall continue in

172 force and operation, and shall govern and regulate the board of health of the city of Philadelphia, as the same may hereafter be altered by law or ordinance; and all sums of money due, payable to, or received by, the board of health shall be paid into the city treasury, and all sums expended by or for the purposes of the board of health shall be paid by the city treasurer upon orders drawn under appropriations regularly made by councils.

SECT. 17. On the first Tuesday in June, anno Domini 1854, and on the first Tuesday in May in each year thereafter, the qualified voters of each ward of the said city shall elect two assessors who shall have and possess the qualifications that members of the senate are required to possess, who, being duly qualified, shall do and perform within their respective wards all the duties that the usages and laws of this Commonwealth now enjoin upon assessors and assistant assessors; and at all elections of such assessors each voter shall vote for one assessor, and the two candidates having the highest number of votes shall be elected.

The city commissioners shall, immediately after such election in each year, issue their precept to the said assessors of the respective wards requiring them to make out and return, within such time as the said commissioners shall designate, not later than the first day of September following, a just and perfect list, in such form as the commissioners shall direct, of all the taxable persons residing within their wards respectively, and all property, taxable and exempt by law,

with a just valuation of the same; and whenever the assessors of any ward cannot agree upon the valuation of any property,
173 the city commissioner, senior in office, shall be umpire, and decide. The office of assistant assessor, within the said city, is hereby abolished.

The duty of making extra assessments, now enjoined by law upon the officers of election, shall be exclusively performed by the assessors. The assessors of each ward shall meet for that purpose, in their respective wards, on the tenth day prior to the second Tuesday in October, annually, and public notice of the time and place thereof shall be given by the city commissioners, in two daily newspapers of said city, ten days prior thereto.

Each assessor shall return the names of one-half of the number of jurors within his ward required for each year, and the precept of the city commissioners to the assessors shall conform to this provision. Any assessor who shall receive any reward for returning or omitting to return the name of any person to serve as juror, and any person who shall offer or give such reward shall forfeit the sum of $100 the said city, to be recovered before any alderman.

Each assessor shall receive an annual sum in lieu of all other compensation, to wit, for the year ending May, anno Domini 1856, and for every third year thereafter, the sum of $400, and for all other years the sum of $300 per annum.

SECT. 18. On the first Tuesday in June, A. D. 1854, and on the first Tuesday in May in every year thereafter, until otherwise provided by law or ordinance, the qualified voters of each of the wards of the city of Philadelphia shall elect, one citizen who shall have and possess the qualifications that the members of the senate of this Commonwealth are required to possess, to serve as guardian of the poor of the said city.

174 They shall enter upon the duties of their office on the first Monday in July of each year, and shall each take an oath or affirmation, to be administered by any alderman of the said city, that he will discharge the duties of the office of guardian of the poor truly and impartially to the best of his ability.

Provided, That the existing arrangements for the support of the poor in the boroughs and townships of Manayunk, Roxborough, Germantown, Bristol, Frankford, Whitehall, Oxford, Lower Dublin, Delaware, Moreland, and Byberry, shall remain and continue until they are changed and altered by the councils of the city of Philadelphia, and while those arrangements continue, no election shall be held under the provisions of this section for guardians of the poor in the twenty-first, twenty-second, and twenty-third wards of said city.

Provided, That in the districts within the twenty-first, twenty-second, and twenty-third wards, where houses for the accommodation of the poor are provided, no change shall be made without the consent of the qualified voters of the respective districts containing the respective institutions for the support of the poor.

SECT. 19. The guardians of the poor, elected in June, A. D. 1854, in accordance with the provisions of the preceding section, shall

meet at the almshouse, in the city of Philadelphia, at 10 o'clock, on the morning of the first Monday in July of the same year, and also on the same day and hour yearly thereafter, and organize themselves into a board, and shall elect a president, and such other officers as may be necessary for the proper transaction of the business of such board; and upon such organization all the estate whatsoever, real and personal, that shall then be, by law or otherwise, vested in, or be in possession of the guardians for the relief and employment of the poor of the city of Philadelphia, the district of Southwark, and the townships of the Northern Liberties and Penn, shall forthwith vest in the city of Philadelphia, subject to all the trusts, conditions, and liabilities now legally applicable thereto, and the present guardians and officers of said body shall cease their functions, and the said elective guardians shall become vested with all the powers, faculties, rights, privileges, and immunities of the present guardians of the poor, and subject to the performance of the duties thereof, except as hereby otherwise provided; and all laws of this Commonwealth creating, governing, and regulating the said corporation shall continue in force and operation, and shall govern and regulate the guardians of the poor of the city of Philadelphia, except as the same may hereafter be altered by law or ordinance; and all sums of money due, payable to, or received by the board of guardians of the poor, shall be paid into the city treasury, and all sums expended by or for the purpose of the board of guardians of the poor, shall be paid by the city treasurer upon orders drawn under appropriations regularly made by councils.

SECT. 20. On the first Tuesday in June, 1854, the qualified voters of each of the wards of the city of Philadelphia, except the twenty-first, twenty-second, twenty-third, and twenty-fourth wards, shall elect twelve citizens qualified to serve as members of the senate of this Commonwealth, four of whom shall be elected to serve for one year, four for two years, and four for three years as directors of public schools; and on the first Tuesday in May in each year thereafter, the qualified voters of each of the said wards shall elect four citizens of like qualifications to serve as directors of public schools for three years. They shall enter upon the duties of their office on the first Monday in July next succeeding their election.

At the first election held under this act, each of the qualified voters of said ward shall vote for nine directors, and the twelve highest shall be elected, and at future elections each qualified voter shall vote for three directors, and the four highest shall be elected.

Provided, That the qualified voters within the twenty-first, twenty-second, twenty-third, and twenty-fourth wards shall elect the same number of school directors as are now by law allowed, and the school director in said wards shall be elected by separate districts, each district embracing the qualified voters of said ward residing in the bounds of the present school section, and the school directors thus elected shall meet together in each school section established by the act, and each qualified voter in the last mentioned wards shall vote for the whole number of school directors to be elected.

SECT. 21. For public school purposes each ward shall constitute a school section, and the board of controllers shall have full power to apportion the schoolhouses, and distribute the duties of the directors of the schools to and for all or any of the wards of the city in such manner as the board of controllers shall direct. The
177 directors of each section shall meet and organize on the first Monday of July next succeeding their election, and, upon such organization, shall have and possess all the powers, rights, privileges, and immunities that shall then be, by law or otherwise, vested in the school directors of the several sections of the first school district; and from and after such organization all the rights, privileges, and immunities of the school directors last named shall cease and terminate, and all laws of this Commonwealth regulating and governing the school directors last named shall cease to operate with regard to them, but shall continue in full force and operation for regulating and governing the school directors elected and organized in accordance with the provisions of this act.

In case of any vacancy occurring in either of the sectional boards of school directors by death, resignation, or otherwise, such vacancy shall be filled by the remaining directors of the ward wherein such vacancy exists, and the director chosen to fill such vacancy being properly qualified, shall continue to serve for and during the time the director, whose vacancy he fills, could have served, and no longer.

SECT. 22. The school directors of each ward of the city of Philadelphia for the ensuing year shall, on the third Tuesday of June, of each and every year, elect one of their own number a controller to serve for one year, and shall give him a certificate of such election; the controllers thus elected shall each be sworn or affirmed that he will discharge the duties of the office of controller of public
178 schools with fidelity, to the best of his ability, and they shall enter upon the duties of their office on the first Monday in July next succeeding their election.

The controllers, elected in the year 1854, shall meet, at ten o'clock a. m., on the first Monday in July of that year, in the room of the controllers of public schools in the city of Philadelphia, and shall then and there organize themselves into a board, and shall elect a president and such other officers as they deem necessary to serve for the term of one year; and upon such organization shall have the name and style of the controllers of public schools of the first school district of Pennsylvania.

And on the first Monday of July in each year thereafter the controllers shall meet as aforesaid, and shall take the oath of office, and enter upon the duties thereof.

The president and other officers of the board shall be elected annually on the first Monday in July.

SECT. 23. Immediately upon the organization of the said board of controllers, all property, real and personal, all trusts and trust funds, and all estate, rights, privileges, and immunities whatsoever that are, or shall be, by law, or otherwise, vested in, owned, possessed, or enjoyed by, or that in any wise appertain, to the corporation created by

the acts of assembly passed April 16, A. D. 1845, entitled an act relating to the controllers of the public schools of the city and county of Philadelphia, shall be vested in and be held, possessed, and enjoyed, by the city of Philadelphia, subject to all the trusts,
179 conditions, and liabilities now legally applicable thereto; and all sums of money due, payable to, or received by the board of controllers shall be paid into the city treasury, and all sums expended by or for the purposes of the board of controllers shall be paid by the city treasurer upon orders drawn under appropriations regularly made by councils.

SECT. 24. There shall be two aldermen in each of the wards of the city of Philadelphia; those aldermen and justices of the peace, who are in office at the time of the passage of this act, shall continue to reside and hold their offices within the limits of the ward, township, or borough in which they were originally elected. In any ward of the said city, where there shall be more than two aldermen or justices of the peace residing and holding their offices at the time of the passage of this act, the number thereof shall be reduced to two, as their commissions shall respectively expire, unless the qualified voters of such ward shall vote to increase the number thereof.

The aldermen of said city shall be elected in each ward by the qualified voters thereof, on the first Tuesday in May, in accordance with the provisions of the act of assembly of June 21, A. D. 1839, entitled an act providing for the election of aldermen and justices of the peace, and the acts supplementary thereto.

It shall be lawful for councils to designate and appoint as many of the aldermen of the said city as the public welfare may require, to be police or committing magistrates, who shall receive such compensation as councils may provide and pay, and it shall not be lawful for any alderman in said city to take fees in criminal cases; but
180 nothing herein contained shall be taken to impair the powers or diminish the duty of any and all aldermen and constables to be conservators of the peace, and to execute the criminal laws of the Commonwealth.

SECT. 25. Until otherwise provided by law, in all elections for members of Congress the qualified voters of the said city shall continue to vote in their respective congressional districts, as now by law established, as if this act had not been passed; and if any election division shall happen to comprise portions of two congressional districts, an additional and separate box shall be provided for the election of officers of such division.

Until otherwise provided by law, in accordance with the provisions of the constitution, the existing districts in the city and county of Philadelphia shall continue without change for the election of senators and representatives to the legislature of Pennsylvania, and thereafter the said representatives shall be chosen in separate election districts, as they shall be established by law.

SECT. 26. On the first Tuesday in June, A. D. 1854, and on the first Tuesday in May in each year thereafter, the qualified voters of each ward of the city of Philadelphia shall elect two constables; they

shall be qualified as the laws of this Commonwealth require such officers to be, and shall, upon entering the requisite security, be commissioned by the court of quarter sessions of the county of Philadelphia; they shall be under and subject to the same legal penalties,
do and perform all duties that the usages and laws of this
181 Commonwealth enjoin upon such officers: *Provided*, That the qualified voters within the twenty-first, twenty-second, twenty-third, and twenty-fourth wards shall elect the same number of constables as are now by law allowed; and the constables in said wards shall be elected by separate districts, each district embracing the qualified voters of said wards respectively residing within the bounds of the present districts for electing constables, in like manner as if this act had not been passed.

SECT. 27. The councils of said city shall appoint a competent number of skilful surveyors and regulators to perform the duties required by law; the duties of such officers to extend respectively over convenient limits to be prescribed by said councils, and said officers shall keep a record of their respective regulations for the use and authority of said city, and receive such compensation for their services as may be fixed by ordinance, and shall continue in office during good behavior, and on the termination of their official service the records kept for public use shall be delivered up to their successors in office.

And such number of said surveyors and regulators shall be organized into a board under a head for such purposes relating to surveys, the planning of the city, building of bridges, the construction of sewers, and grading of highways, as councils may declare by ordinance, which board may hear by appeal, and if neither party before a hearing shall have appealed to court, shall finally decide upon all questions of party lines, the position and thickness of party walls, of
the condemnation thereof for insufficiency, and of the proper
182 structure of new buildings and the party walls thereof, so as to secure the safety and health of the citizens under the statutes in force in said city: *Provided*, That nothing herein contained shall alter or interfere with any survey or regulation made, or directed to be made, under the several laws of this Commonwealth, of any portion of the county of Philadelphia, but the same shall be completed, or, if already confirmed, shall remain unalterable, as therein provided, unless said alterations shall be ordered by a resolution of said councils, and approved by the court of quarter sessions, upon public notice previously given for the space of thirty days in at least two of the daily newspapers of the said city, until otherwise provided by ordinance.

And provided further, That in any alteration that may be made of the regulations of any portion of the city, in conformity with the provisions of this section, whereby damage may ensue to private property, compensation shall be made for such damage, to be ascertained and paid by law, as in case of damage for opening streets.

All official acts and proceedings of the surveyors and regulators shall be returned to the head of the said board, to remain in his office, from which certified copies shall be made and furnished on request,

in the same manner and for the same compensation as copies are furnished from the land department of this Commonwealth.

SECT. 28. The select and common councils shall elect in
183 joint meeting, by viva voce vote, at the last stated meeting in the month of September next, sixteen citizens, having proper knowledge of the duties for port wardens, eight of them to serve for one year, and eight of them for two years, from the first day of June, A. D. 1855; and thereafter, on or before the last stated meeting of councils, in May, in each year, elect eight such citizens to serve for two years as port wardens from the first day of June then next succeeding, who, together with the master warden, shall do and perform the duties which do now, or may by law or ordinance hereafter, belong to the port wardens.

It shall be the duty of the said councils, after the requisite surveys and soundings shall have been made, to fix the lines beyond which no wharf or pier shall be constructed, and to keep the navigable waters within said city forever open and free from obstructions. The city councils shall authorize the construction of wharves upon a plan and scale to meet the demands of commerce, keep the same and the avenues leading thereto open and free from obstruction, and shall, moreover, provide from time to time for the more convenient selection, appointment, regulation, and compensation of pilots navigating to and from the said city, and for the greater security and better disposition of vessels within the port of the same, and they may enact ordinances for the purposes in this section mentioned.

SECT. 29. It shall be the duty of the sheriff of Philadelphia i ty and county to give notice of all the elections held under the pro-
184 visions of this act, designating the officers to be elected, and the time and place of such election, such notice shall be by proclamation and advertisement in at least two daily newspapers, published in the city of Philadelphia, at least twenty, and not more than thirty, days prior to every election, and the expenses of such advertising shall be paid out of the treasury of the city of Philadelphia. The county commissioners of the county of Philadelphia shall, immediately prior to the first election in the city of Philadelphia, and the city commissioners thereafter shall, have the respective places appointed for holding such elections put in convenient and proper order for holding and conducting the same, shall furnish to the election officers of each division the necessary blanks, stationery, et cetera, and a list of the taxable inhabitants of such division, and shall generally do and perform such duties appertaining to elections as they would be required by law or usage to perform had the elections or election districts of the said city not been changed or altered: *Provided*, That the sheriff and the other officers shall do and perform all the duties in relation to the elections under this law which are enjoined upon them by the general election laws now in force, unless otherwise provided by the act.

SECT. 30. The general, special, municipal, and all other, except military, election by the qualified voters of the city of Philadelphia, shall be held in the respective election divisions of the wards of said

city; the said elections shall open at or before eight o'clock in
185 the morning, and close at seven o'clock in the evening, and the tickets to be voted at the municipal elections in the city of Philadelphia shall be on separate pieces of paper, on which shall be written or printed the name of the office to be filled, and immediately under the name of the office, the name or names of the person or persons voted for to fill such office. In all general and special elections within the city of Philadelphia, each ward of the said city shall be an election district, and have a return judge, and the return judges of the city of Philadelphia shall meet at the State House in said city.

SECT. 31. The election on the first Tuesday in June, A. D. 1854, shall be held and conducted by election officers, as follows: Each and every set of officers, that is, the judge and two inspectors, who shall have been respectively elected at the same poll, and who shall reside within the several wards respectively, as fixed by the second section of this act, shall hold and conduct the election at one of the election divisions of such ward; and if it shall so happen that all the election officers who shall have been elected at the same poll shall not reside within the bounds of any one of the wards fixed by the second section of this act, then and in that case such set of officers shall act as aforesaid in the ward in which a majority of such officers shall reside. The said officers by sets, and not individually, shall, in case of difficulty or misunderstanding, determine by lot the election division in which they shall act.

The court of common pleas of Philadelphia county is hereby
186 vested with power to settle summarily any question that may arise concerning the officers to conduct said elections, and also to direct according to the true intent and spirit of this act, which set of election officers shall act as aforesaid, in any case or exigency which may arise or exist, not provided for by this act; and any vacancy that shall exist and continue for half an hour after the earliest time fixed by law for opening the polls, shall be filled in the manner now provided by law; and on the first Tuesday in June aforesaid, and on the second Tuesday in May, in each year thereafter, the qualified voters of each of said election division shall elect, in the manner prescribed by law, one person to serve as judge, and two persons to serve as inspectors of elections, for one year, each voter, however, to vote for one inspector.

SECT. 32. It shall be the duty of the judge of election in every election division of said city at every general, municipal, and special election, to make out and subscribe, on the night of such election, a certificate of all the votes given at such election di visionfor every office voted thereat; and it shall be the duty of the judge to deliver the same to the prothonotary of the court of common pleas on the day succeeding such election, before noon of that day, which certificates shall be open to the inspection of any citizen; and any judge who shall fail to deliver such certificate as aforesaid to the said prothonotary shall forfeit fifty dollars.

And the said prothonotary shall, on the second day after such

187 election, make out and deliver to the sheriff of the said county a certified list of the judges of each and every division from which such certificate shall not have been received as aforesaid, with a precept to the sheriff to levy and collect the said penalty from the said judges as is now practised and allowed in cases of fines imposed upon defaulting jurors, provided that the said court may, upon good cause shown, remit such fines.

And in case any such certificate shall not have been placed in the office aforesaid by noon of the day aforesaid, the said court may, on application of any citizen, issue an attachment against the judge or judges in default, to compel the production and filing of such certificate.

SECT. 33. The municipal elections of the city of Philadelphia shall be conducted in the manner required by the act of assembly of July 2d, A. D. 1839, entitled an act relating to the elections of this Commonwealth, and its supplements. As soon as the votes given at each division are counted, duplicate returns thereof shall be made out by the officers of such division; one copy shall be deposited in one of the ballot-boxes, as required by section seventy-four of the act aforesaid; the other copy shall be used for the purpose of making up full returns of the ward; and the said last copy, together with a full and complete return of the votes given in such ward, signed by the judges thereof, shall be filed by one of the judges in the office of the prothonotary of the court of common pleas of Philadelphia county, as hereinafter provided.

188 SECT. 34. The returns of all municipal elections in the city of Philadelphia, and the certificates to be given to persons elected, shall be made out in the following manner, to wit: Two complete copies of a return of all the votes given in each division, and a certificate of election to each of the persons elected to office in such division, shall be made out and signed by the judge, inspectors, and clerks of such division; and on the day succeeding the election, at nine o'clock a. m., the judges and inspectors of all the divisions of the ward shall meet and make out a return of all the votes given in such ward, and a certificate of election for each of the persons elected to office in such ward, which returns and certificates shall be signed by the judges of such ward, or a majority of them; the judges shall then designate one of their number to be a return judge, and shall give him an accurate copy of the returns of the votes given in such wards for each municipal officer voted for, and the return judges of the several wards shall meet at the State House at ten o'clock in the morning of the Thursday succeeding the day of election, and shall then and there, in the manner provided in the seventy-eighth section of the act of assembly of July 2d, anno Domini one thousand eight hundred and thirty-nine, aforesaid, proceed to add together the number of votes given in the several wards for the several officers voted for, and shall make out full and complete returns of said votes, and a certificate of election to the
189 persons elected, which returns shall, immediately upon the adjournment of the return judges, be, by the president thereof,

filed in the office of the prothonotary of the court of common pleas; the certificates of election for the ward and division officers shall be delivered to the persons elected, by the constables of the ward, within three days after the election, and the certificates for the other officers voted for shall be delivered to them by the sheriff or his deputy within two days after the meeting of the return judges. The places for the meetings of the said judges and inspectors in said wards shall be determined by a majority of those who are required to meet.

SECT. 35. The returns of all municipal elections in the city of Philadelphia, except of members of the select and common councils, shall be subject to the inquiry and determination of the court of common pleas of the county of Philadelphia, upon complaint of fifteen or more of the qualified voters of the proper ward or division; or in the case of mayor, treasurer, city controller, receiver of taxes, or city commissioner, by at least fifty of the qualified voters of the said city, which complaint shall be filed in the said court within twenty days after such election, and at least two of the complainants shall take and subscribe an oath or affirmation that the facts set forth in such complaint are true; and the said court, in judging of such elections, shall proceed upon the merits thereof, and determine finally concerning the same, according to the laws of this Commonwealth,
and shall have power, if they believe such complaint to have
190 been made without sufficient causes, to decree that the complainants, or any one or more of them, shall pay all legal costs incurred by such investigation. The select and common councils, respectively, shall, in like manner as each branch of the legislature of this Commonwealth, judge and determine upon the qualifications of their members.

The trial of a contested election shall be held and conducted and be proceeded with in the manner set forth in the several sections of the act of assembly passed July second, anno Domini one thousand eight hundred and thirty-nine, providing for the trial of contested elections of the senate and house of representatives, excepting that the committee shall be seven in select, and eleven in common council.

No complaint of an undue election or false return shall be acted upon unless presented within ten days after the organization of councils, nor unless signed by at least fifteen qualified voters of the proper ward, at least three of whom shall take and subscribe an oath or affirmation that the facts set forth in said petition or complaint are true.

SECT. 36. The elections within the city and county of Philadelphia, which, according to existing laws, are held on the third Friday in March in every year, shall in the year 1854 be held on the first Monday in June, and thereafter on the first Tuesday in May; and the terms of all commissioners and officers elected on the 3d Friday in March last, which would by law expire before the first Tuesday in
June, are hereby extended, and they shall continue in office
191 until their successors are duly chosen and qualified by and in pursuance of the elections held on the first Tuesday in June,

as aforesaid, and until they shall be superseded in manner hereinbefore provided.

SECT. 37. All the right, title, and interest of the several townships, districts, and other municipal corporations mentioned in this act of, in, and to all the lands, tenements, hereditaments, bridges, ferries, railroads, wharves, market stalls, landings, landing places, water works, gas works, buildings, easements, of, in, and to all goods, chattels, moneys, effects, debts, dues, demands, amercements, fees, perquisites, rights, incomes, bonds, obligations, judgments, liens, actions, and rights of action, books, accounts, and vouchers, and of, in, and to all other property and estate whatsoever and wheresoever belonging to any or either of them, be, and they are hereby, vested in the city of Philadelphia, to take effect on the first organization of the city councils.

Provided, That all the estates and incomes now held in trust by the county (present city) and each of the townships, districts, and other municipal corporations united by this act shall be held by the city of Philadelphia upon and for the same uses, trusts, limitations, charities, and conditions as the same are now held by the said corporations, respectively.

SECT. 38. That the net debt of the county of Philadelphia, after deducting and cancelling the portion held by the sinking fund and the several net debts of the guardians for the relief and employment of the poor of the city of Philadelphia, the district of Southwark, and the townships of the Northern Liberties and Penn, of the mayor, aldermen, and citizens of Philadelphia, of the 192 commissioners and inhabitants of the district of Southwark, of the commissioners and inhabitants of the district of Moyamensing, of the commissioners and inhabitants of the Kensington district of the Northern Liberties, of the commissioners and inhabitants of the incorporated district of the Northern Liberties, of the commissioners of the district of Spring Garden, of the commissioners and inhabitants of Richmond, in the county of Philadelphia, the districts of West Philadelphia and Belmont and Aramingo, of the boroughs of Whitehall, Manayunk, Germantown, and Frankford, and the commissioners and inhabitants of the district of Penn, and the board of health and controllers of the public schools, after deducting and cancelling the portions held by the respective sinking funds of the said several corporations, is hereby consolidated and formed into one debt, to be called the debt of the city of Philadelphia, and payable at the same times that the principals of said debts are now made payable, certificates of which said debts are to be issued in sums of not less than one hundred dollars, in lieu of the present separate debts so consolidated, to the respective owners in lieu of their present certificates of the same, at the option of such owners, bearing the same rates of interest that the debts so to be exchanged now bear, and payable on the first days of January and July, at the office of the treasurer of the city of Philadelphia.

There shall be annually raised by tax, in addition to the income of the corporation property, a sufficient sum to discharge the annual

interest on the said consolidated city debt, and no debt shall be incurred or loans made by the said city without contemporaneous
193 appropriation of a sufficient annual income or tax, exclusive of loans to pay the interest and sink the principal of such debt in thirty years.

SEC. 39. The fiscal year of the city of Philadelphia, the board of guardians of the poor of the city of Philadelphia, the board of health and of the controllers of public schools of the city of Philadelphia, and inspectors of prison, shall commence on the first day of January in each and every year. It shall be the duty of the board of guardians of the poor to furnish the councils of the city of Philadelphia, on or before the first day of March in every year, an estimate of the amount that, in their judgment, will be required during the current fiscal year for the maintenance and support of the almshouse establishment of the said board; and the controllers of public schools, and the board of health, the port wardens, and inspectors of the prison, severally, shall, in like manner, on or before the same day in each year, furnish to the said councils the amount that, in their judgment, will be necessary for the support of public schools, and the necessary expenses of the board of health, the port wardens, and inspectors of the prison, respectively, for the current fiscal year; and the said city councils shall fix the rate and levy all the taxes now authorized by law within the limits of said city and county, except the State tax, and direct the amount to be applied and paid by the city treasurer to health, school, poor, city, and other purposes, according to law. The said taxes shall be voted so as to show how much is raised for said objects respectively; they shall be
194 collected and accounted for to the treasurer as one city and county tax. The said tax, and all State taxes accruing within said city limits, shall be paid to the receiver of taxes, and all allowance made by law for the collection and prompt payment of the State tax shall accrue to the city treasury: *Provided*, That the said city councils shall discriminate in laying said city taxes as not to impose upon the rural portions those expenses which belong exclusively to the built portions of said city.

And provided, That no money shall be hereafter borrowed on the faith and credit of said city unless the ordinance or other authority authorizing the same shall have been introduced at one stated meeting of the common council, and the draft thereof published in at least two of the newspapers of the city, daily, for four weeks before the final consideration and passage thereof by the said common council.

And at any stated meeting of the select council held at least one week after the final consideration of any such ordinance by the common council, the select council may consider and act upon any such ordinance; but the select council shall not originate any ordinance or other authority for borrowing money; and no loan shall be authorized without a vote of two-thirds of the whole number of the members of each council.

And provided also, That it shall be the duty of the city councils to

obtain by dedication or purchase, within the limits of the said city, an adequate number of squares or other areas of ground convenient of access to all its inhabitants, and lay out and maintain such
195 squares and areas of ground as open public places, for the health and enjoyment of the people forever.

SECT. 40. It may be prescribed by ordinance that paving of streets, except at the intersection thereof, and of footways, and laying of water pipes within the limits of the city, shall be done at the expense of the owners of the ground in front whereof such work shall be done, and liens may be filed by the said city for the same as is now practised and allowed by law.

SECT. 41. The county of Philadelphia shall continue to be one of the counties of this Commonwealth, and all county officers not superseded by this act, shall continue in office, and continue to be elected and voted for at the places of election provided for by this act, as in other respects now provided by law, and be denominated officers of the county of Philadelphia; and all courts shall continue therein to exercise the jurisdictions and powers now conferred upon them by the constitution and laws of this Commonwealth; and the councils of said city and the officers thereof shall exercise all the powers and authorities of the superseded county commissioners and county board, and commissioners of sinking fund, and of other officers not inconsistent with this act, in such way and manner as by this act is, or by the city councils may be, established.

SECT. 42. That the select and common councils of the city of Philadelphia shall be, and they are hereby, authorized and directed to organize a police department in and for the said city, and a fire department subordinate to or independent of that of police, and
196 to make, ordain, and establish all needful laws and ordinances for the regulation thereof, and for the preservation of the public peace, the suppression of riot and disturbances, and for the extinguishment of fires and the protection of property thereat; and for this purpose the said councils shall be, and hereby are, vested with ample power and authority in the premises.

SECT. 43. All laws providing for the appointment of tax collectors within the said city of Philadelphia, and all other laws altered or supplied by this act, are hereby repealed: *Provided, however*, That the city of Philadelphia shall have and possess all and every the full power, right, and authority to collect all the debts, demands, and property of all and every kind transferred to and vested in the said city by virtue of this act, as if the corporation hereby dissolved were not extinct, and all suits to be brought therefore shall be in the name of the city of Philadelphia, as if the same had been originally vested in the said city.

SECT. 44. That all acts of the legislature not inconsistent with this act, now in force, shall continue in operation within the limits of the county, city, district, borough, or township in which they are now operative under the authority of the city councils, courts, and officers created by this act, or permitted to continue as consistent therewith until such acts shall be altered or repealed by the legislature: *Pro-*

vided, That the city councils shall have power by ordinance to extend the operation of laws now in force within the city police
197 or municipal districts to other parts, or over the whole of the enlarged limits, and to declare what laws have become obsolete by this act, or the extension as aforesaid of other laws.

All ordinances of the present city of Philadelphia and other municipalities within the county of Philadelphia, shall continue in force within the limits of said city and municipalities, respectively, until repealed by said councils, and no longer; and said councils in enacting new ordinances may make such distinctions between the built and rural portions of the new city as they may deem required by circumstances. It shall be the duty of councils to cause the laws and ordinances of said city, as they shall be framed and adopted under this act, to be published for the information of the citizens, and to present copies thereof to the executive, the State library, and each member of the present legislature and the legislature to convene next after the publication, and to make application for such further legislation as shall thereupon be found necessary.

SECT. 45. All officers elected by the qualified voters under this act shall be subject to removal from office on impeachment for misdemeanor in office, or other sufficient cause, on charges to be preferred by the common council, and tried by the select council in manner prescribed by the constitution and laws of this Commonwealth as to the impeachment by the house of representatives and trial thereof by the senate. All other officers shall be subject to removal for sufficient cause in such manner as councils may determine.

SECT. 46. The city council shall fix the compensation and prescribe the duties of all officers of said city in such manner as to carry out the purposes of this act, and as the welfare of said city may
198 require, not inconsistent with the laws and constitution of this Commonwealth and of the United States. Whenever any elective officer of said city shall die, or become incapable of fulfilling the duties of his office, his place, except where other provision is made for filling the vacancy, shall be filled by a joint vote of the city councils until the next city election and the qualification of a successor in the office: *Provided*, That such vacancy shall exist at least thirty days before the next city election, otherwise such vacancy shall be filled at the next election thereafter.

SECT. 47. No salary of any officer to be elected according to the provisions of this act by the qualified voters of the city, hereby incorporated, shall be increased or reduced by any act or ordinance to take effect during the term for which he shall have been elected; and in all cases where the salary of any officer shall not be fixed by law, it shall be fixed by councils.

SECT. 48. No person shall, at the same time, be a member of more than one of the following bodies, to wit: The city councils; the guardians of the poor; the board of health; the controllers of the public schools; the directors of the public schools, and the director of the Girard College; nor shall any person be a member of any of these bodies who is at the same time a salaried officer under the same

or under any of them: *Provided*, That this shall not be construed so as to prevent a controller of the public schools from being at the same time a school director.

SECT. 49. Every officer or agent receiving moneys for the
199 city, and payable to the city treasurer, shall give bond for the faithful performance of his duty, and shall be required to make return to the city controller once in every week, or oftener, if councils shall direct, under oath or affirmation, of each item of the moneys received by him, and immediately upon making such return to pay the amount in his hands to the city treasurer. The said city controller is hereby authorized to administer such oath or affirmation, and any person falsely making such oath or affirmation, or guilty of falsehood in any other oath or affirmation required by the provisions of this act, or by any ordinance of councils made in pursuance thereof, shall be guilty of perjury.

SECT. 50. It shall be the duty of the city councils to provide by ordinance for the establishment and regulation of all the departments indicated by this act and other laws in force in said city, under the proper heads, and with the necessary clerks, officers, and assistants, to wit: For law, police, finance, surveys, highways, health, water, gas, fire, the poor, the city property, and the public grounds, and such others as may from time to time be needful; and, through the mayor and proper committees, the said councils shall maintain a supervision of each department, whether corporate or otherwise, and over the inspectors of the county prison, for the exposure and correction of all evils and abuses, and for that purpose may require the production and inspect all books and papers and the attendance of witnesses by subpœna, and examine them under oath or affirmation; but no member or members of council, whether as a committee or otherwise, shall make any disbursement of corporate moneys,
200 nor audit the accounts thereof, nor perform any other executive duty whatever: *Provided, however*, That all officers who, by force of any ordinance, may have charge or authority in the assessment or collection of taxes, or the appropriation or disbursement of moneys, shall be elected by the popular vote on the first Tuesday of May of each year.

SECT. 51. If any councilman, guardian of the poor, member of the board of health, controller or director of the public schools, or director of the Girard College, warden, inspector of the prison, or any other member or officer of the said city corporation, or of any corporation or department by this act recognized, or clerk therein, shall at any time be directly or indirectly interested in any sale to or contract for supplies to be furnished to said city, or to any corporation or department by this act recognized or placed under the supervision of councils of which he shall be a member or officer or clerk, or shall receive any gratuity, money, or property whatsoever by reason of such sale or contract, or shall take any fee beyond that prescribed by law, he, if a councilman, or elective officer, or officer appointed by court, shall be impeached in manner hereinbefore provided, and if found guilty shall forfeit and vacate his seat, and, if any officer

or clerk appointed by councils, shall be removed from his office or appointment; and any vendor or contractor participating in such act shall be incapable of recovering any demand thus infected by fraud, and all such offenders shall be deemed guilty of a misdemeanor,
201 and, upon conviction of such offence in the court of quarter sessions for said city and county, shall be fined and imprisoned at the discretion of said court.

SECT. 52. No citizen of the said city shall be incompetent as a witness or juror in any case wherein the said city shall be a party or interested by reason of being a citizen thereof.

SECT. 53. The meetings of the said city councils and all corporations and boards authorized or recognized as existing under this act, shall be at all times open and accessible to all citizens deporting themselves with order and decorum.

202 That the debt of the city of Philadelphia, being the aggregated debts of the several municipalities consolidated by the act of the 2 February, 1854, amounted, at the period of the consolidation thereof in the year 1854, to the sum of sixteen million five hundred and thirteen thousand six hundred and fourteen dollars and seventy-seven cents, ($16,513,614 77.)

That the debt of the city of Philadelphia amounted in the year 1859 to the sum of twenty-one million ten thousand three hundred and seventy-six dollars and fifty-six cents, ($21,010,376 56.)

That at the period of the said consolidation of the said several municipalities in the year 1854 certain assets of the nominal value of ten million twenty-three thousand three hundred and thirty-six dollars, (10,023,336,) of which the actual value is not known, were held by the said various municipalities, and upon the consolidation thereof became held by the said city of Philadelphia, which assets have since by the said city of Philadelphia been made part of a sinking fund for the liquidation of the city debt; and that in the said sinking fund and part thereof are also assets which amount to the sum of six hundred and five thousand four hundred and seven dollars and seventy cents, ($605,407 70,) of which assets part were property of the said various municipalities at the period of their consolidation and part are the proceeds of taxes since laid by the said city of Philadelphia.

203 That of the debt incurred between 1854 and 1859 one million seven hundred and twenty-five thousand dollars was on account of subscriptions made to the Northwestern Railroad Co. and the Sunbury and Erie Railroad Co. by the mayor, aldermen, and citizens of Philadelphia before 2d February, 1854.

That the statements aforegoing of the debt of the city of Philadelphia does not include gas loans.

That the various ordinances of the mayor, aldermen, and citizens of Philadelphia and of the city of Philadelphia touching the said gas loans shall be used as given in evidence.

And further, it was agreed by the solicitors for the said plaintiffs and defendants, respectively, in manner and form following, that the undersigned should report at the request of the said defendants.

That the records of the following suits be used as given in evidence:

Record of suit in the circuit court of the United States to October sessions 1852, No. , in which Madelaine Henrietta Girard *et al.* are plaintiffs, and the mayor, aldermen, and citizens of Philadelphia, defendants.

Record of suits in the supreme court of Pennsylvania to December term 1852, Nos. 79, 80, 81, 83, in which Madelaine Henrietta Girard and others are plaintiffs, and the mayor, aldermen, and citizens of Philadelphia, defendants.

204 Record of suit in court of common pleas of Schuylkill county to September term, 1859, No. 703, in which Madelaine Henrietta Girard *et al.* are plaintiffs, and the city of Philadelphia are defendants.

Record of suit in the circuit court of the United States to October sessions, 1836, No. 1, in which Vidal *et al.* are plaintiffs, and the mayor, aldermen, and citizens of Philadelphia are defendants.

That the following are true copies from the journals of the select and common councils of the mayor, aldermen, and citizens of Philadelphia, and be used as given in evidence:

The common concil of the said corporation, at their meeting held January 7, 1854, by a majority of votes, passed the following preamble and resolutions, to wit:

Whereas a movement has been made in the house of representatives to conselidate the city of Philadelphia, incorporated districts, boroughs, and townships of the county of Philadelphia into one municipal corporation, and the measure contemplated being one generally desired by the citizens of the city of Philadelphia, they believing that the consolidation contemplated would be productive of increased prosperity to all included within its action, therefore,

Resolved, That the senators and members of the house of representatives from the city of Philadelphia, be, and they are hereby, requested to endeavor to secure the passage of an act to consolidate the city, incorporated districts, boroughs, and townships into one municipality.

Resolved, That the clerks of select and common councils be, and they are hereby, directed to transmit to the senators and mem-
205 bers of the house representatives from the city of Philadelphia, copies of the foregoing preamble and resolutions.

Select council, January 7, 1854, these resolutions were ordered to be printed for the use of the members, and at a meeting held January 19, it was resolved "that a joint special committee of three members from each chamber be appointed to examine a bill now pending before the legislature for consolidating the city and districts into one corporation, for the purpose of endeavoring to have the provisions of said bill placed upon such a basis as will best protect the interests and trusts of the city."

That Etienne Girard, in the bill mentioned as the father of the

plaintiffs, on the 2 January, 1833, by his attorney, John F. Girard, received from the executors of Stephen Girard his legacy mentioned in the will of the said Stephen Girard, for the sum of five thousand dollars.

That Margaret P. Lardy, one of the complainants, on the 2 January, 1833, received from the said executors her legacy, five thousand dollars, under the will.

That Madelaine H. Girard, one of the complainants, by her guardian, on the 24 January, 1833, received from the said executors her legacy of five thousand dollars under the will.

206 That Anna H. Girard, mother of F. D. Dumaine and Margaret P. Dumaine, two of the complainants, on the 2 January, 1833, received, by her attorney, John F. Girard, her legacy of five thousand dollars under the will.

That an ordinance of the councils of the city of Philadelphia, approved February 11, 1859, entitled "An ordinance to levy and fix the rate of taxes for the year 1859," be used as if given in evidence.

That the following is a copy of one of the blanks kept in the office of the receiver of taxes, and used in making up the bills presented to the tax payers, and shall be used as given in evidence:

207 OFFICE OF RECEIVER OF TAXES,
Philadelphia, , 1860.

M. Dr., for taxes for 1860.

Page.	Description of property in twentieth ward.	Valuation.	City tax. Rate $1 75.	State tax. Rate 25 cts.	Dollars.	Cts.

Ice boat, &c	$0 04
Highways	22
Police	22
Loan	75
Lighting city	9
School	28
Poor	15
	1 75

Discount of 12 per cent. per annum from the date of payment to the 1st of January, 1861, off city tax.

Discount off State tax 5 per cent. if paid before 25th of July, 1860.

State tax on pleasure carriages, 1 per cent.

State tax on emoluments of office, 2 per cent.
Received payment for Wm. P. Hamm, receiver of taxes.
——— ———, *Clerk.*

☞ See that no property is omitted.
☞ Bills furnished when called for at the office.

208 Whereupon the undersigned hereby reports to the court the various matters aforestated, as evidence taken in the cause, and that no further evidence was offered by the said parties, complainants and defendants.

All of which is respectfully submitted by
(Signed) AUBREY H. SMITH, *Examiner.*

209 Filed July 30, 1860.

209½ *Opinion of the court.*

GRIER, J.

Afterwards, to wit, on the seventh day of October, A. D. in the year last aforesaid, the opinion of the court is delivered by Justice Grier, which opinion is in the words and of the tenor following, to wit:

210 *Submitted on bill and answer.*

In C. C. U. S., E. D. of Penna., in chancery.

MADELEINE H. GIRARD *et al.*
vs.
THE CITY OF PHILADELPHIA.

The heirs at law of the late Stephen Girard have again come into court, claiming a portion of the property devised by him to the city of Philadelphia.

The case of Vidal *vs.* the executors of Girard (2 How., 127) has put an end to any further controversy as to the validity of the trusts and the power of the city to execute them. Nor do the heirs, who are complainants in this bill, pretend to call in question the matters finally and conclusively settled by that case.

The facts which are supposed to rehabilitate their claim have occurred since its decision. Admitting that the will of Stephen Girard entirely excluded them from any claim of right to the property in question, they now contend that the consolidation act has made it impossible for any one to execute the trusts for municipal purposes, and as a consequence, the heirs are entitled to that portion of the estate appropriated by the testator for such uses. If it shall appear that the effect of the consolidation act is not that which the bill alleges, it may be unnecessary to discuss the question, whether, if it were, the consequence assumed from it be legitimate.

The will of Stephen Girard, after sundry bequests to his relatives and friends, and to certain specified charities, announces (§ XX) his great and favorite charity to be the establishment of a college for the

education of poor orphans. It then proceeds: "Now, I give, devise, and bequeath all the residue and remainder of my real and personal estate, &c., unto the mayor, aldermen, and citizens of Phila-
211 delphia in trust for the several uses, intents, and purposes hereinafter mentioned and declared."

The attempt to restrain the alienation of the realty, being inoperative, cannot affect the validity of this devise. After many and very special directions as to the college, its construction and government, it further directs that two millions of the personal estate be appropriated to the building; and if this sum should not be sufficient, the remainder thould be taken "from the final residuary fund hereinafter expressly referred to," and which is found in the XXIV section, as follows: "And as it regards the remainder of said residue of my personal estate to invest the same in good securities, and in like manner to invest the interest and income thereof from time to time, so that the whole shall form a permanent fund, and to apply the income of the said fund—

"First. To the further improvement and maintenance of the aforesaid college, as directed in the last paragraph of the twenty-first clause of this my will.

"Second. To enable the corporation of the city of Philadelphia to provide more effectually than they now do for the security of the inhabitants of the said city by a competent police, including a sufficient number of watchmen, really suited to the purpose; and to this end, I recommend a division of the city into watch districts, or four parts, each under a proper head.

"Third. To enable the said corporation to improve the city property and the general appearance of the city itself, and in effect to diminish the burden of taxation, now most oppressive, especially on those who are the least able to bear it."

212 "To all which objects the prosperity of the city and the health and comfort of its inhabitants, I devote the said fund as aforesaid, and direct the income thereof to be applied yearly, and every year forever, after providing for the college, as hereinbefore directed, as my primary object."

The realty had before been devised, subject to the trusts of the will, and considering that portion of the fund as already invested in the best manner, (as appears from his forbidding its alienation,) the income of the whole is then devoted to these three objects. The college being "the primary object," so long as any portion of this fund shall be found necessary for its improvement and maintenance on the plan and to the extent declared in the will, the second and third objects can claim nothing.

The bill admits this to be a valid charity, and claims only the residue after that is satisfied. Now it is admitted (for it has been so decided) that till February, 1854, the corporation was vested with a complete title to the whole residue of the estate of Stephen Girard, subject to these charitable trusts, and consequently at that date his heirs-at-law had no right, title, or interest whatsoever in the same. But the bill alleges that the act of the legislature of that date, (com-

monly called the "consolidation act,") which purports to be a supplement to the original act incorporating the city, has either dissolved or destroyed the identity of the original corporation, and it is consequently unable any longer to administer the trust. Now, if this were true, the only consequence would be, not that the charities or trusts should fail, but that the chancellor should substitute
213 another trustee. It is not insisted that the mere change or abbreviation of the name has destroyed the identity of the corporation.

The bill even seems to admit that a small addition to its territory and jurisdiction might not have that effect, but that the annexation of twenty-nine boroughs and townships has smothered it to death, or rendered it utterly incapable of administering trusts or charities committed to it when its boundaries were Vine and South streets and the two rivers. There is nothing to be found in the letter or spirit of this act which shows any intention in the legislature to destroy the original corporation, either by changing its name, enlarging its territory, or increasing the number of its corporators. On the contrary, "all its powers, rights, privileges, and immunities, &c., are continued in full vigor and effect."

It provides also that "all the estates, &c.," held by any of the corporations united by the act shall be held "upon and for the same uses, trusts, limitations, charities, and conditions as the same were then held."

By the act of 4th April, 1852, the corporation was authorized "to exercise all such jurisdiction to enact all such ordinances, and to do and execute all such acts and things whatsoever as may be necessary for the full and entire acceptance, execution, and prosecution of any and all the devises, bequests, trusts, and provisions contained in said will." It may also "provide by ordinance or otherwise for the election and appointment of such officers and agents as they may deem essential to the due execution of the duties and trusts enjoined and created by the will of the late Stephen Girard."

Now it cannot be pretended that the legislature had not the power to appoint another trustee, if the act had dissolved the corporation, or to continue the rights, duties, trusts, &c., in the enlarged
214 corporation. It has done so, and has given the widest powers to the trustees to administer the trusts and charities according to intent of the testator, as declared in his will.

The legislature may alter, modify, or even annul the franchises of a public municipal corporation, although it may not impose burdens on it without its consent. In this case the corporation has assented to accept the changes, assume the burdens, and perform the duties imposed upon it; and it is difficult to conceive how they can have forfeited their right to the charities which the law makes it their duty to administer.

The objects of the testator's charity remain the same while the city (large or small) exists; the trust is an existing and valid one, the trustee is vested by law with the estate and the fullest power and authority to execute the trust.

Whatever the fears or fancy of the complainants may be as to the moral ability of this overgrown corporation, there is no necessary or natural inability which prohibits it from administering this charity as faithfully as it could before its increase. In fact it is matter in which the complainants have no concern whatever, or any right to intervene.

If the trust be not rightly administered the cestuy que trust or the sovereign may require the courts to compel a proper execution. In the case of Vidal, (2 How., 191,) the Supreme Court say that "if the trusts were in themselves valid in point of law, it is plain that neither the heirs of the testator or any other private person would have any right to inquire into or contest the right of the corporation to take the property or execute the trust; this would exclusively belong to the State in its sovereign capacity and as parens patrice, and its sole discretion."

This is not an assertion that the legislature as parens patrice
215 may interfere by retrospective acts to exercise the cy pres power, which has become so odious from its application in England to what were called superstitious uses.

Baxter's case and other similar ones cannot be precedents where there is no established church which treats all dissent as superstition.—(2 Vernon.)

But it cannot admit of a doubt that where there is a valid devise to a corporation in trust for certain charitable purposes unaffected by any question as to its validity because of superstition, the sovereign may interfere to enforce the execution of the trusts, either by changing the administrator, if the corporation be dissolved, or if not, by modifying or enlarging its franchises, provided the trust be not perverted and no wrong done to the beneficiaries.

Where the trustee is a corporation no modification of its franchise or change in its name while its identity remains can affect its rights to hold property devised to it for any purpose. Nor can a valid vested estate in trust lapse or become forfeited by any misconduct in the trustee or inability in the corporation to execute it, if such existed—charity never fails—and it is the right as well as the duty of the sovereign by its courts and public officers, as also by leigislation, (if needed,) to have the charities properly administered.

Now there is no complaint that the charity, so far as regards the primary and great object of the testator, is not properly administered; and it does not appear that there now is or ever will be any residue to apply to the secondary objects. If that time should ever arrive, the question whether the charity shall be so applied as to have the "effect to diminish the burden of taxation" on all the corporators or only those within the former boundaries of the city, will have to
be decided. The case of Soohan *v.* the city, (9 Casey,) does
216 not decide it, nor is this court bound to decide it. The answer shows how it may be done, and the corporation has ample power conferred on it to execute the trust according to either hypothesis; and if further powers were necessary the legislature, executing the sovereign power, can certainly grant them. In the mean-

time the heirs-at-law of the testator have no concern in the matter, or any right to interfere by a bill quia timet.

Their anticipations of the future perversion of the charity by the corruption or folly of the enlarged corporation, and the moral impossibility of its just administration, are not sufficient reasons for the interference of this court to seize upon the fund or any part of it, and to deliver it up to the complainants, who never had, and by the will of Stephen Girard were not intended to have, any right, title, or claim whatsoever to the property.

In fine the bill must be dismissed because—

1st. The residue of the estate of Stephen Girard, at the time of his death, was by his will vested in the corporation on valid legal trusts, which it was fully competent to execute.

2. By the supplement to the act incorporating the city, (commonly called the consolidation act,) the identity of the corporation is not destroyed. Nor can the change in its name, the enlargment of its area, or increase in the number of its corporators affect its title to property held at the . of such change.

3. The corporation under its amended charter has every capacity to hold, and every power and authority necessary to execute to trusts of the will.

4. That the difficulties anticipated by the bill as to the execution of the secondary trusts are imaginary. They have not arisen,
217 and most probably never will.

5. And if they should, it is a matter, whether probable or improbable, with which the complainants have no concern, and cannot have, on any possible contingency.

Per cur.

(Signed) R. C. GRIER,
Asso. Just. S. C. U. S.

218 Filed Oct. 7th. 1861.

218½ *Decree of the court.*

Afterwards, to wit, on the day and year last aforesaid, the decree of the court was made, which decree is in the words and of the tenor following, to wit:

219 C. C. U. S., Oct. S., 1860.

MADELEINE HENRIETTE GIRARD, *et al.*
v.
THE CITY OF PHILADELPHIA. } S.

And now, October 7, 1861, this cause came on for hearing upon bills, answer, replication, depositions and exhibits, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed that the complainants' bill be dismissed with costs.

Filed October 7, 1861.

219½ *Prayer of complainants for leave to enter an appeal.*

Afterwards, to wit, on the thirteenth day of July, A. D. 1866, the complainants, by their attorney, Charles Ingersoll, esquire, pray for leave to enter an appeal, which appeal being read and filed, is in the words and of the tennor following, to wit:

220 C. C. U. S., E. D. Pa., Oct. Sess., 1860.

DE LENTILHAC *et al.* *v.* THE CITY OF PHILADELPHIA. } No. 8.

And now, to wit, this 13th July, 1866, the complainants, by their counsel, Charles Ingersoll, pray the court for leave to enter an appeal from the decree of the court dismissing the complainants' bill.

Filed 13 July, 1866.

220½ *Appeal allowed.*

Afterwards, to wit, on the seventeenth day of July, in the year last aforesaid, the appeal of the complainants, by their solicitor, Charles Ingersoll, esquire, was allowed, which being read, is in the words and of the tenor following, to wit:

221 UNITED STATES, *Eastern District of Pennsylvania, sct:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, greeting:

Because, that in the record and process and *and* also in the rendering of judgment in a suit before you, between Madeleine Henrietta Girard, Marguerite P. Lardy, Anne Stephanie de Lentilhac and Alfred De Lentilhac, her husband, Fabricius Devars Dumaine, a minor, and Marguerite Palmire, a minor, by their next friend, John Devars Dumaine, all aliens and subjects of the Emperor of the French, complainants, and the city of Philadelphia, a municipal corporation holding its franchises from the State of Pennsylvania, defendants, in a certain suit in equity, a manifest error has intervened to the great damage of the said Madeleine Henriette Girard, Marguerite P. Lardy, Anne Stephanie de Lentilhac and Alfred de Lentilhac, her husband, Fabricius Devars Dumaine, a minor, and Marguerite Palmire, a minor, by their next friend, John Devars Dumaine, as in their complaint has been stated—and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then under your seal you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the judges of the Supreme Court of the United States, to be holden at Washington on the first Monday of

December next, that the record and process aforesaid being inspected they may cause to be done thereupon what of right ought to
222 be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at Philadelphia, this twenty-fifth day of July, A. D. one thousand eight hundred and sixty-six, and in ninety-first year of the independence of the said United States.

(Signed,) W. GRIER HIBLER,
Pro Clerk.

222½ *Citation issued.*

Afterwards, to wit, on the day and year last aforesaid, a citation was issued to the said the city of Philadelphia, which citation being read, is in the words and of the tenor following, to wit:

223 UNITED STATES, *Eastern District of Pennsylvania, sct:*

To "the city of Philadelphia, a municipal corporation, holding its functions from the State of Pennsylvania."

You are hereby cited and admonished to appear at a Supreme Court of the United States to be holden at the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to an appeal from the decree of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, in a cause in equity, wherein Madeleine Henriette Girard, Marguerite P. Lardy, Ann Stephanie de Lentilhac and Alfred de Lentilhac, her husband, Fabricius Devars Dumaine, a minor, and Marguerite Palmire, a minor, by their next friend, John Devars Dumaine, all aliens and subjects of the Emperor of the French, were complainants, and you were defendants, and show cause, if you can, why the said decree should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable John Cadwalader, one of the judges of said circuit court for said district, this 17th day of July, A. D. 1866.

(Signed) JOHN CADWALADER, *Judge.* [L. S.]

Philadelphia, 26 July, 1866.

Service of the foregoing citation accepted by
(Signed) EGBERT K. NICHOLS,
For F. CARROLL BREWSTER, *City Sol.*

223½ Afterwards, to wit, on the fourth day of October, A. D. 1866, "Barnes' new map of the consolidated city of Philadelphia, published in 1855," which at page the tenth of the examiner's report the examiner reports was agreed to by counsel to "be used as given in evidence," ordered to be filed, which order is in the words and of the tenor following:

C. C. U. S., Oct'r sess., 1860.

224 GIRARD *et al*
vs.
THE CITY OF PHILADELPHIA. } No. 8.

Please to file the accompanying "Barnes' new map of the consolidated city of Philadelphia, published in 1855," which, at page the tenth of the examiner's report, the examiner reports was agreed by counsel to "be used as given in evidence."

C. INGERSOLL,
For the Complainants.

B. PATTON, Esquire,
Clerk C. C. U. S.

Filed Oct. 4, 1866.

225 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, sct:

I certify the foregoing to be a true and faithful copy of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit in equity therein lately depending between Madeleine Henriette Girard and others, aliens and subjects of the Emperor of the French, complainants, and the city of Philadelphia, a municipal corporation, holding its franchises from the State of Pennsylvania, respondent.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said circuit court at Philadelphia, this fourth day of October, A. D. 1866, and in the ninety-first year of the independence of the said United States.

[SEAL.] BENJ'N PATTON,
Clerk C. C. U. S.

226 Know all men by these presents, that I, John Fabricius Girard, of No. 1,131 Spruce street, Philadelphia, in the State of Pennsylvania, am held and firmly bound unto the city of Philadelphia, a municipal corporation, holding its franchises from the State of Pennsylvania, in the sum of five hundred dollars to be paid to the said the city of Philadelphia, its successors or assigns, to which payment, well and truly to be made, I bind myself, my heirs or assigns, by these presents.

The consideration of the above obligation is as follows: Whereas, at the October term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, begun and holden at Philadelphia in the said district on the 7th day of October, anno Domini eighteen hundred and sixty-one, (1861,) a decree was rendered and pronounced by said court in a cause in equity in said court pending, wherein Madeleine Henriette Girard, Marguerite P. Lardy, Anne Stephanie de Lentilhac, and Alfred de Lentilhac, her husband, Fabricius Devars Dumaine, a minor, and Marguerite

Palmire, a minor, by their next friend, John Devars Dumaine, all aliens, and subjects of the Emperor of the French, are complainants, and the said the city of Philadelphia are respondents, from which decree the said Madeleine Henriette Girard *et al.*, complainants, have appealed to the Supreme Court of the United States, next to be holden at Washington, on the first Monday of December next:

227 Now, therefore, if the Girard *et al.*, complainants, shall prosecute their said appeal before said Supreme Court of the United States with effect, and shall well and truly pay all such costs and damages as shall be adjudged for them to pay by said Supreme Court, or by said circuit court, by reason of said appeal, then the before-written obligation shall be void and of no effect, otherwise it shall remain in full force and effect.

Sealed with our seals, and dated this twenty-fifth day of July, anno Domini one thousand eight hundred and sixty-six.

[L. S.] J. F. GIRARD.

Signed, sealed, and delivered in presence of
W. GRIER HIBLER.

I consent that the above bond is sufficient.

EGBERT K. NICHOLS,
For T. CARROLL BREWSTER, &c.,
City Solicitor.

Filed October 16, 1866.

Appellants' Brief.

By the will of the late Stephen Girard, proved in the year 1831, a devise was made of the ultimate residue of his estate to "police" and other municipal uses of "the Mayor, Aldermen, and citizens of Philadelphia," at that time the corporate name of the City of Philadelphia; the testator studiously excluding from that and all other bequests contained in his will the County of Philadelphia, and every part of the County except the Township of Passyunk, one of its municipalities, for which was bequeathed, to certain trustees of the testator's own selection, a small sum, six thousand dollars, to build and maintain a school-house. In the year 1854 the City, which was territorially about a sixty-fourth part of the County, and in population less than a fourth, was consolidated with the other twenty-eight municipalities of the County, and they were made one in territory, population, municipal franchises, powers, property, debts, liabilities, and all other things within legislative control, without any exception whatever, by the corporate name of "the City of Philadelphia." The allegation of the plaintiffs is, that since the consolidation act, the devise of this ultimate residue to municipal uses cannot take effect, and goes over to the heirs-at-law as a lapsed devise, or a devise rejected by the devisee. The appellants do not interfere with the provision for the college for orphans, as made in the will and established by this Court in *Vidal* v. *Girard*, 2 Howard, 127, or with any purpose contained in any part of the will. On the contrary, their case turns upon the supposed intention of the testator; and they find themselves protected in their interpretation of it by the case of *Soohan* v. *The City of Philadelphia*, 33 Pennsylvania Reports, 4, decided in 1859, since the consolidation act, a decision of the Supreme Court of Pennsylvania which has been adhered to in all cases involving the question of the identity, as it is to be understood under Mr. Girard's will, of the late and present City. The Court in that case ruled that the City devised to by Mr. Girard was the late City, not the present or consolidated City, and that orphans born beyond the limits of the late City were not, in the sense of Mr. Girard's will, orphans to be admitted to the college as born in the City of

Philadelphia. The appellants insist that the uses of the ultimate part of "the remainder of said residue" of the estate, bequeathed to municipal uses of the late City, cannot be performed or satisfied under the new charter; and further, that the consolidation of the late City with its suburbs renders it administratively and arithmetically impossible to apply the fund at all, without applying it, alike, to all parts of the consolidated City, making the provision for the City a provision for the County, contrary to the decision in *Soohan* v. *The City of Philadelphia.* That would be an application of it against the case of Soohan and against the explicit, emphatic, and repeated declarations of the will.

I. *Mr. Girard's devise of the remainder of the residue of his estate was not an absolute, but a strictly limited, devise.*

The devise was in the following words, (Record, page 60:) "XXIV. And as it regards *the remainder of said residue* of "my personal estate, in trust, to invest the same in good "securities, and in like manner to invest the interest and "income thereof, from time to time, so that the whole shall "form a permanent fund, and to apply the income of the "said fund: 1st. To the further improvement and mainte- "nance of the aforesaid College, as directed in the last para- "graph of the twenty-first clause of this will. 2d. To "enable the corporation of the City of Philadelphia to pro- "vide more effectually than they now do for the security of "the persons and property of the inhabitants of the said "City, by a competent police, including a sufficient num- "ber of watchmen, really suited to the purpose; and to "this end, I recommend a division of the City into watch "districts, or four parts, each under a proper head, and "that at least two watchmen shall, in each round or "station, patrol together. 3d. To enable the said corpo- "ration to improve the City property, and the general ap- "pearance of the City itself, and, in effect, to diminish the "burden of taxation, now most oppressive, especially on those "who are the least able to bear it." To the questions before the Court, it matters not whether the devise is properly or improperly called by the testator, in his will, a *trust.* His meaning is clear enough, The estate was limited, not absolute. The devisees took in trust for certain limited and specified objects, and for none other. It was an *office* to be performed by the devisee. "If a grant be made to a man of "an office generally, without adding other words, the law "tacitly annexes hereto a secret condition that the grantee

"shall duly execute his office." It was in that sense a trust. Whether it should be called a *trust* or an *office*, or a *limited estate*, is a question of words, and cannot affect the case, as understood in the Court below, on both sides, and by the learned Judge. ~~When the word *trust* is used, but no *trust* is needed, there is held to be none.~~ 2 Jarman on Wills, 198. "No positive rule can be laid down in what cases the devise "will carry with it a beneficial character, and in what it will "be construed a trust, but on all occasions, the Court, refusing "to be governed by mere technical phraseology, extracts the "probable intentions of the settler from the general scope of "the instrument." Lewin on Trusts, 171, vol. 24 Law Library. Any expression in a will showing the testator's intention, limits the devised estate accordingly. The word *trust*, in a will, means only what is required to effect the intentions of the testator. 1 Jarman, 796, 2 ib., 198, 273; 1 Powell on Devises, 223; *Doe* vs. *Norton*, 11 Meeson and Welsby, 923. When a will gives property to an object, and the testator points out the way it shall go, "a trust is cre-"ated, unless he shows clearly that his desire expressed is "to be controlled by the trustee, and that he shall have an "option to defeat it." *Inglis* vs. *The Trustees of the Sailor's Snug Harbor*, 3 Peters, 119. Devises *ad faciendum pro decimis ad propositum, ad effectum, quod prestat consilium, pro concilio,* are limited estates. 2 Thomas' Coke on Littleton, 7, 8; 3 Com. Dig., (90,) Condition, (a. 4;) 4 ibid., (173, 4;) *Estate by Devise*, (n. 9.) So far as the "remain-"der of the said residue" was to be applied to the College, it was, in the fullest sense, a trust. "A corporation being "trustee of a charity, is looked upon, in equity, as an indi-"vidual." Grant on Corporations, 118. The College trustees and beneficiaries were different parties. The trustee was the City, but the beneficiaries were not the City. They were certain orphans, to be educated by the City, at the expense of the trust. Should the City abuse the College trust, they might be removed by the Courts, as an individual might be, and another trustee appointed. That was done in the case of the City of Coventry, who were trustees of a charity. See *The Mayor of Coventry* vs. *The Attorney-General*, 7 Par. Cas. 235; a case cited and approved by this Court in the Dartmouth College case. 4 Wheaton, 676, 7. *Dummer* vs. *The Corporation of Chippenham*, 14 Vesey, 243. The College was strictly a trust. A political body was appointed the trustee by Mr. Girard, but any individual could fill their

place. Not so with the portion of the "remainder of the "said residue," to be applied to municipal uses. The City were there both trustees and beneficiaries: it was ownership. The fund was their own, to be applied to their own use and benefit, under conditions and limitations imposed by the testator; but imposed to insure its application to themselves. They could not be removed from this trust. In *Marbury* vs. *Madison*, in Mr. Kendall's cases, in the Pennsylvania case of *Brown* vs. *The Commissioners of the County of Philadelphia*, 21 Penna. R. 37, the courts of justice could not have removed from office the Secretary of State or the Postmaster-General or the County Commissioners, for refusal to obey their mandates; nor could the City have been removed from this trust, not merely because the municipal government alone could perform its municipal uses, but because to appoint a trustee over them would be to convert a beneficial interest into a technical trust, and make a new will for the testator. Nor could the courts interfere with the municipal exercise of that discretion to which the fund was bequeathed.† The City might exercise, within the limits of the will of the testator, its political or municipal discretion in the application of the money. It was a discretion, to deprive them of which the proceeding must be against their franchises, and take away their charter. To improve the police of a city and diminish the burden of its taxation, is a political function. They would be amenable only for what was positively unlawful, as Mr. Madison was, and Mr. Kendall was, and as the County Commissioners were, in the case in 21 Pennsylvania; and as the City would be for the unlawful application of an amount raised for municipal objects by loan or taxes. If the City appointed improper persons functionaries of the Girard College, it would be the subject of mandamus or injunction. *Dummer* vs. *The Corporation of Chippenham*, 14 Vesey, 243.* "As it is a maxim that the execution of a trust shall "be under the control of the Court, it must be of such a na-"ture that it can be under that control." *Morice* vs. *The Bishop of Durham*, 10 Vesey, 539; *Wheeler* vs. *Smith*, 9 Howard, 55. ~~But not so if they appointed improper persons policemen~~.

II. *The defendants, avoiding Soohan's case, make their claim, not for the present City, but for the territory and population of the late City.*

The City of Philadelphia, which, from its foundation in 1683, had occupied somewhat less than two square miles of

† See Martineau vs City of Phila. 9 Casey 202.

* But not so if they appointed improper persons policemen.

the one hundred and twenty-nine square miles of the County of Philadelphia, was one municipality of twenty-nine existing within the County. It was consolidated by Act of the Legislature of Pennsylvania, of the 2d February, 1854, with the other twenty-eight municipalities, the twenty-nine together now comprising the entire territory and population of the County. The territory and population of the so consolidated twenty-nine municipalities, as appears by one of the maps given in evidence before the Examiner, have been divided into twenty four wards, for the new City, of which six, namely: the Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth, comprise the territory and population which was of the old City; and the other eighteen the territory and population which was of the other twenty-eight municipalities. The defendants, by their answer, claim for the territory and population of the late City. (Record, page 75.) They could plausibly claim in no other way; decided cases, English and American, and the will of the testator, would be against them *" Where, before "the passing of the statute, 5 and 6, W. 4, c. 76, all free-"men inhabiting within an ancient borough claimed right of "common on certain lands, and that Act, section 7, has ex-"tended the limits of the borough, the right of common can "no longer be described in pleading to be a right 'in all "freemen inhabiting within the borough;' for that Act "only reserves the right to those who reside within the "old limits, and does not make the newly defined borough "the same to all intents and purposes as the old one." *Beardsworth* vs. *Torkington*, 1 Queen's Bench, 782. "Lands "are devised to the parson and church wardens of the parish "church of A. and their successors, to the intent that the "rents, after certain charges are defrayed, may go to the "use of that parish church, at the discretion of the parson "and church wardens, and their successors. After the fire "of London the parish of A. is united with the adjacent "parish of F., and the parish church of A. becomes the "parish church of the united parishes of A. and F. The "parishioners of F. have no right to have any part of the "rents applied in ease of that proportion of the expenses of "maintaining and repairing the church of the united parishes "which it falls upon them to defray." *The Attorney-General* vs. *Vivian*, 1 Russel, 226. The inhabitants of the "Rolls Liberty" claimed, as part of the parish of St. Dunstan, an account of the charities given by will and deed to the poor of the parish. By the Statute 43 Elizabeth, the part

* and Legislation. See act 13th April 1853 Sect Pamphlet Laws 275.

of the parish of St. Dunstan lying in London, had been separated from the part lying in Middlesex. The chancellor decreed to the Rolls Liberty their portion of charities left to the parish of St. Dunstan before the 43 Elizabeth. *Attorney-General* vs. *Grant, Rector of St. Dunstans*, 1 P. Wms. 669. The boundaries were enlarged of a township of Luzerne County, Pennsylvania, holding property to charitable uses. Held, that changing the limits of the township could not change the limits of the charity, and that an Act of the Legislature assuming the contrary, was void under the decision in the Dartmouth College case. *Township of Plymouth* vs. *Township of Jackson*, 3 Harris, 44. The devise in favor of the Girard College is to the old City, not the new; and orphans born within the limits of the old City are entitled to the same preferences since consolidation as before. *Soohan* vs. *The City of Philadelphia*, 9 Casey, 9. It is a principle of law, that the Legislature, in altering the franchises, cannot affect individual rights in the case of public more than private corporations. *Terret* vs. *Taylor*, 9 Cranch, 52; *Stormfeltz* vs. *Manor, &c.*, 1 Harris, 560; *City of St. Louis* vs. *Russel*, 9 Missouri, 512; *Bailey* vs. *The Mayor of New York*, 3 Hill, 531; 2 Kent's Commentaries, 275; Story on the Constitution, Section 1387. The will is explicit, *passim*, against any claim by the defendants for the consolidated City. If the testator had said in so many words, *I exclude the suburbs*, he could not have spoken more plainly. The devise was to the municipal uses of "The Mayor, alder-"men and citizens of Philadelphia." The college devise, he said, was to "The Mayor, aldermen, and citizens of Philadelphia," and the suburbs he called "other parts of Pennsylvania." The devise to the Delaware avenue improvement he directs to be stopped at the old City limits, Vine and South streets. So the public schools' devise. So the buildings' improvement devise. The devise of $6,000 to individual trustees of the testator's selection, to build a schoolhouse in the neighborhood of his farm in Passyunk township, is the only exception, Passyunk township being beyond the City limits. The devise for the uses of the College and the devise for municipal uses were to the same devisee. If the College uses were for the old City, so must be the municipal uses. It could hardly be insisted that an undivided fund, given by the same clause of the same will to the same City, "The Mayor, aldermen, and citizens of Philadelphia," for three designated objects: 1. City orphans; 2. City police;

3. City improvement and taxation, should go to two different cities, the orphans' portion of the fund to the old City, and the municipal portion to the new City.

III. *The effect of consolidating the City with the County municipalities, is to render the performance of the municipal uses devised to impossible.*

Whether the process of administering, proposed by the defendants, can confine the application of the fund to the territory and population of the late City, is a *fact;* and the evidence ought to resolve it. The taxes (Record, page 106) assessed for the year 1856, (which is taken at random,) to the consolidated City, amounted to upwards of two millions of dollars; say.....$2,000,000

The territory (Record, pages 106–7) and population of the old City, viz., the 5th, 6th, 7th, 8th, 9th and and 10th Wards of the consolidated City, pay more than half the assessed taxes, say 1,000,000

Assessed taxes to be paid by the other eighteen wards, say..... 1,000,000

In the year (Record, page 155) 1860, (which is taken at random,) the rate imposed on $100 of assessed value was $1.75, which covered all City expenses, police, schools, light, water, highways, health, &c. Of the $1.75, 22 cents, say one-eighth of $1.75, was devoted to police. Therefore, the consolidated City paid for police, say 250,000

Of which $250,000 the 5th, 6th, 7th, 8th, 9th and 10th Wards paid, say one-half..... 125,000

And the other eighteen wards the other half, say $125,000

Let it be supposed the 5th, 6th, 7th, 8th, 9th and 10th Wards pay their half of the $250,000 from the Girard Fund. Such is to be, as suggested by the answer of the defendants (Record, page 76), the method of administration by the consolidated City, in order to give the six wards and no other wards, the benefit of the fund. Of the amount applicable to police, one-half is to be paid by taxes imposed on the eighteen wards; the other half is to be paid for the six wards out of the Girard Fund; thus, as the defendants aver, liberating the six from so much of the burden of taxation. This is the scheme of the defendants. This answer stops

here; does not go on to show how the $125,000, exclusively raised by the six wards, is to be exclusively expended on them; and it is plain, if expended on all twenty-four, the will is set at naught. "None of the moneys," says the 24th clause, "principal, interest, dividends or rents arising from the said "residuary devise and bequest shall at any time be applied "to any other purpose or purposes whatever than those "herein mentioned and appointed;" namely, the purposes of the old City. On this point the will is emphatic, and the answer of the defendants is unequivocal. The defendants admit that the fund cannot lawfully be expended upon any but the six wards. Such, too, is Soohan's case.

The defendants, not having shown how the $125,000, supposed to be raised from the Girard Fund, can be expended on the six wards only, the plaintiffs proceed to show it is not possible, and what the expenditure of it must needs be. The $250,000 for police, the eighteen wards supplying $125,000, and the six $125,000, are in the City treasury, or half in the City treasury and half in the Girard treasury, or where the defendants please. How will it be used? Let the expenses of police be proportioned to the population to be protected. In the Common Council, eighty-five members represent the twenty-four wards, comprising the population of the new City. Of them, twenty members represent the six wards, and sixty-five members represent the eighteen. Therefore, if police service is in proportion to population, the answer to the question, how much value the six wards get for their $125,000 is, that they get in the proportion of the twenty to sixty-five. The population of the eighteen wards is sixty-five, and of the six wards, it is twenty. The rule of three shows that the six wards receive back, in police service, about $59,000 of their $125,000. As 85 is to 20, so is $250,000 to $58,823$\frac{8}{8}$. The Girard fund pays $125,000 for police expenses of the year, and $58,823 of that amount are applied to the six wards, comprising the territory and population of the late City, the devisees; and the balance, $66,177, is applied to the territory and population of the eighteen wards, which were not the City, and not devisees, but in the plainest language excluded by the testator from all interest in the devise. Again, let the expenses of police service be proportioned, not to population, but territory; and there being less than two square miles to the six wards, and one hundred and twenty-nine to the twenty-four, a very small portion indeed of the $125,000 escapes misapplication. As

129 is to 2, so is $250,000 to $3,875 $\frac{25}{129}$. The Girard fund pays $125,000 for police, and of that sum $3,875 are applied to the six wards, and $121,125 to the eighteen. Conceding, what is a large concession, that the need of police is not greater in the suburbs than in the central parts of the City; and assuming that police is demanded in a ratio compounded of population and territory, the late suburbs must get of the Girard fund, used for police purposes, an amount between four times and sixty-four times more than the devisees get. When the sum furnished from the Girard fund is $125,000, the devisee has the benefit of an expenditure varying from $3,875 to $58,123; and those to whom Mr. Girard left nothing get all the rest. This is the result, carrying out the rule suggessed by the defendants in their answer. No other rule could be suggested, nor any other result attained. If the municipalities are consolidated they are all parts of the same establishment; the testator could not endow the police of six wards without endowing the police of the other eighteen; he might as well attempt to endow the circulation of one of a man's legs, and not the other. But let it be imagined that by the application of some rule or test, hitherto unknown, it had been discovered that, according to the measure of territory, population, disorder, crime, &c., the eighteen wards require exactly ten times more police than the six; and to enable the six to expend their Girard money on themselves, the eighteen raise ten dollars by taxes for every dollar of the Girard fund paid by the six—what then? If there were no Girard fund, and the police were paid by taxes only, the six wards would pay half the police expenses, and the eighteen wards the other half; but now, in order that the six may enjoy their legacy, the eighteen pay ten for one, instead of one for one. Instead of paying exactly as much as the six, the eighteen pay ten times as much. To make it practicable for the six wards, when consolidated, to perform the uses of the devise, the eighteen wards pay ten times as much money as they would pay for police service, if Mr. Girard had left no legacy to the six. They abandon the basis of taxation. This would violate the consolidated charter, which directs them to pay one for one, and not ten for one, and must violate any charter which it would be possible to obtain. Again, to avoid, if may be, absurd results, let it be imagined that, to insure the safety of the devise, a superadded $125,000 from the Girard fund is applied to the police of the six wards; $125,000 in addition to the $125,000 raised by taxes, what would

be the consequence? 1. The will is disappointed; the burden of taxation is not *diminished;* nor are the six wards enriched to the amount of a shilling. 2. The six wards being already fully policed by their $125,000 raised by taxes, the $125,000 from the Girard fund would be thrown away. To assume to spend this $125,000 exclusively on the six wards, it is necessary to assume that the demand of police is in exact ratio to the value of real estate; which is out of the question. Real estate (it would be no better for the defendants were it personal estate) pays the annual $2,000,000 of taxes. If the rule, in detailing policemen for service, were that to so many perches of real estate, of the assessed value of so much money, were given so many policemen, Mr. Girard's $125,000 would be expended according to the terms of the will. But the test of the rule of three is superfluous. This money was bequeathed to be kept separate, not only from the money of the County, but from all other money of the late City. When it is applied by the consolidated City, to pay police and diminish the burden of taxation, if there be one police and one taxation for the whole consolidated City, and not a police and taxation for the six wards, and another for the eighteen, the money must needs be laid out in defiance of the will. If Mr. Girard had left to one of these plaintiffs $125,000 for his support, on condition that no part of it went to A. B.; and, as soon as the testator was dead, the legatee made joint purse with A. B., each to contribute $125,000, making $250,000, for mutual support, both to draw upon the common fund according to their necessities, the will would be set at naught. The only difference between such a case and that before the Court, is that here it is morally certain more of the $250,000 will be expended on the eighteen wards than on the six, because the eighteen have more than the six of territory and population needing police, and more political power to enforce a supply of their needs. The defendants, to maintain their position, must satisfy the Court that if, by the legislation of Pennsylvania, all municipal charters were taken away and cities supplied with means from the State treasury, the Girard fund might be sent to Harrisburg, and thence portioned out by the annual appropriation bill, among the various counties of the Commonwealth, as now it is to be among the various wards of one of the counties; and that it might be done consistently with law and the provisions of the will of the testator.

IV. *Grant arithmetical possibility since consolidation to perform these municipal uses for the benefit of the territory and population of the late City. The devise was to a municipal discretion of the late City, and cannot be transferred to the municipal discretion of the county. It comes within the rule in cases of grants or devises to personal discretion.*

The discretion is not transferable. It could not be made over by the judiciary for cause shown, nor can it be made over by the Legislature. Here is a devise to municipal discretion,—a discretion more indispensable than that personal discretion of a friend or trustee confided in by a testator. It was a devise to Cæsar, whose place cannot be supplied. When the beneficiaries have ceased to be the whole constituency of the trust, where is the discretion devised to by Mr. Girard? Assuming the claim of the defendants to be, not for themselves, but for the territory and population of the old City, and assuming it to be possible, since the consolidation, to apply the devised funds as directed by the will, it is plain, notwithstanding, as matter *in pais*, that the devise can come to nothing. The devise to the City for the municipal uses of its own territory and population was reasonably safe. If given to the city of New Orleans, or any other municipality, for the use of the territory and population of the city of Philadelphia, it would have been less safe. But when to this consolidated municipality is confided a trust of preferring one part of itself to another, giving to one more improvements and less taxation, and to the other less improvements and more taxation, the part to be preferred being from four to sixty-four times the inferior of the other in power, the devise is worse than unsafe; it is destroyed. A political body is governed by its interests; it has not honor or conscience, except as involved in its interests. The testator endowed a government, a government which is gone, the existence of which, as it existed when devised to, is of the essence of the devise. If the devise had been to expend Mr. Girard's money in erecting a statue, to be placed in the old City, it might be done by the new City. He devised money to be expended on a particular street of the old City, and it has been done by the new City. But what is the answer to the question *in pais*, would the new City, if they could, give a better police, more improvements and less taxation from year to year to a small minority of its population? In *Fontaine* vs. *Ravenel*, 17 Howard, 386, a case carried up from the Eastern District of Pennsylvania, the

executors of Mr. Kohne, who, under the will, were authorized to distribute a fund to such charitable institutions as they should deem proper, died without performing their trust. The trust was held to have failed. The Court say: "The testator was unwilling to give this discretion to select "the objects of his bounty, except to his executors. He "relied on their discrimination, their judgment, their in- "tegrity and fitness to carry on so delicate and important a "power." * * "Nothing short of the prerogative power, it "would seem, can reach this case." In the case now before the Court no question can arise of the bequest being capable to be supported by the Chancellor by his ordinary powers or with the aid of the sign manual. If the objects of Mr. Girard's trust have not disappeared, the only trustee in the world who could have supported them has disappeared, and the trust is dead; it is incapable of being carried out, according to any one of the three opinions delivered in *Fontaine* vs. *Ravenel.* The incapacity of the trustee may be from death, or from any cause, no matter what, to perform a service which no other party can take the place and perform. For cases of personal discretion, see *Hibbard* vs. *Lambe*, Ambler, 309; *Mercer* vs. *Erie R. R. Co.*, 3 Casey, 402; *Ommany* vs. *Butcher*, 1 Turner & Russell, 260; *Hill* vs. *Young*, 2 N. C. C. 522; *Cole* vs. *Wade*, 16 Vesey, 46; *Bradford* vs. *Belfield*, 2 Simons, 264; Hill on Trustees, 485–9. "If a "grant of land or franchises," said Story, J., in the *Dartmouth College* case, "be made to A in trust for special purposes, "can the grant be revoked and a new grant thereof be made "to A, B and C, in trust, for the same purposes, without "violating the obligations of the first grant?" 4 Wheat, 711. There, the Corporation being private, the question arose upon the right to alter its franchises, contrary to the will of the donor; here, the Corporation being public, the question arises upon the right, after the franchises have been altered, to retain the property contrary to the will of the donor. In the absence of the municipal discretion devised to, the performance of these uses is deprived of *legal certainty.* "*Conjecture is not a basis for judicial decision,*" said Gibson, Chief-Justice, in *Hilyard* vs. *Miller*, 10 Barr, 335. Suppose the new City could perform the uses, who can fail to see it has become very uncertain? It is not even certain where lies the responsibility for their non-performance. Confusion sets in as soon as the trustee and beneficiaries cease to be identical. For example, "the Mayor, aldermen and citizens of

Philadelphia" could have incurred a forfeiture under the will. They were beneficiaries as well as trustees. But if those provisions of the will, the violation of which is made by the testator a cause of forfeiture, were violated by the consolidated City, would forfeiture be the consequence? Could a forfeiture be incurred through the act of those who are not beneficiaries? Again, would a forfeiture be incurred if the act were done against the votes of the beneficiaries, the six wards, comprising the territory and population of the old City? In this point of view the fact averred by the plaintiffs, denied by the defendants, and to be decided on the proofs, that the performance of these uses has become by the act of consolidation impossible, ceases to be material. No higher political certainty could be found than that to which the testator devised these uses, and none lower than that to which they have been reduced. If it were a mere trust, there must be certainty the trustee can perform the uses, and certainty he can be controlled by equity in their performance. They must be such that the chancellor can see to their performance. Not being a mere trust, the testator contrived, as best he could, political certainty for it. In *Wheeler* vs. *Smith*, where the devise was to A and B as trustees for the "town and trade of Alexandria," it was ruled that, such uses being political were not for chancery to control; and that the estate, which would have been well devised to the town of Alexandria for the use of its town and trade, as here the municipal uses of the old City were well devised to the old City for its police, &c., went to the heir-at-law. The town could govern the town and trade by its municipal discretion; but municipal discretion A and B have not, nor has the Chancellor. The property went over to the heir-at-law because the devise was not to the municipality itself. It was to individual trustees, who needed control, but could not be controlled. Here the case is worse; the devise to municipal uses, which was rightly made to the municipality, has been taken from it. The municipal discretion, which was well devised to, has been handed over, not to A and B, but to another municipality, having interests directly hostile to it; a municipality which has no more municipal discretion, in the premises, than would be found in the city of New Orleans or the city of London. The uncertainty of performance by A and B of the uses for the town and trade of Alexandria, if left uncontrolled by equity, except for acts positively unlawful, is nothing to the uncer-

tainty of performance of the uses for the police of the old City by the new one, if equity is to leave them uncontrolled, except for acts positively unlawful. It is not easy to see that any power, judicial or legislative, could have taken the bequest to the town and trade of Alexandria from A and B, and given it to the town itself. It would have been breaking a trust and giving the estate to the beneficiary. But it would have been to make a better will, and possibly to carry out the testator's main purpose. Here, to take the fund from the beneficiary and establish this trust would be, not only to make another will for the testator, but an utterly ineffectual one. The uses as he placed them were as solidly established as political uses may be. But, take them from the beneficiaries, and give them to a trustee, and he must either be, having no municipal discretion, controllable as a mere trustee, which is contrary to the will and contrary to *Wheeler* vs. *Smith*, and in itself absurd, or he must be uncontrollable, which, not being also the beneficiary, is ruinous. The consolidated City would be as irremoveable from the trust as the late City were, but without their municipal discretion in the premises. The trust would have for its protection neither municipal discretion, nor a trustee responsible in equity; and it is for the defendants to say how it would be protected; to make known their *tertium quiddam*, and show the Court subject to what liabilities they propose to hold. *Wheeler* vs. *Smith*, it is true, was ruled under the laws of Virginia, where the statute of 43 Elizabeth does not prevail; but what is there in the 43 Elizabeth and the laws of Pennsylvania to warrant stripping these municipal uses of the only certainty they had or were capable of, and with which the testator so studiously provided them?

V. *There is a class of English cases which bears strongly against the pretention to hold for territory and population and not for the City.*

These cases resemble in a degree those where it has been decided, there being a schism in a church, that the property belongs to the tenets and not to individuals, however respectable and numerous. They may be regarded as ruling the question of *identity*. The new City is technically identical with the old, for the Consolidation Act says so, but not identical according to the will of Mr. Girard. If he had had a contract to light the City, his executors could not be told they must go on and furnish gas to a place sixty-four times larger, because it was identical, by Act of Assembly, with

that with which he had contracted. Nor can it be pretended that, in any manner, the inhabitants of the late City are identical with the City and answer the description in the will. All analogy is against the defendants. Is there any precedent for dividing the assets of a municipal corporation among the corporators? Corporators may sue the corporation, and *vice versa;* they are distinct beings in every possible sense. These English cases are those which rule when land is bequeathed, or a fund to purchase land for charitable uses, which, according to the statute of 9 Geo. II., ch. 36 must be by deed made twelve months at least before the donor's death, and another fund, or the same, to be applied to the support of individuals to be maintained on such land; or any other, no matter what, office of charity to be performed, which connects itself with such devise or purchase, if the former part of the will cannot go into effect, the latter falls with it. If the body of the bequest, the *substratum*, as it is called in these cases, the purchase or devise of the house or land for carrying out the uses to be performed, is unlawful, the individual relief, which is the performance of the use, is not to be effected. Thus, a sum is left to trustees to buy or build a house, and a sum the income of which is for the use of those to be received or maintained there, and the devise to buy realty is void by the statute. The legacy of personalty, which otherwise would be good, is regarded as left to the almhouse, chapel, school, or whatever the proposed establishment may be, (as here the City and not the inhabitants,) and not to the individuals there to be benefited. When it disappears, their benefits go with it. The fund to relieve them is looked upon as an endowment of the chapel, school or poorhouse, and the relief of individuals as auxiliary to and inseparable from it. Did Mr. Girard here endow the political body—the *substratum?* Did he mean to endow *the City*, or was it the citizens and streets? By the 5th clause of the will, he endows citizens who are "poor white house and room-keepers, of good char-"acter;" and by the 20th and 21st clauses, citizens who are "poor white male orphans." By the 22d clause, he endows certain streets. These trusts, in the 22d clause, "to regu-"late, widen, pave and curb Water street, and to distribute "the Schuylkill water therein, upon the following plan:" "to pull down and remove all wooden buildings," "to lay "out, regulate, curb, light and pave a passage or street on "the east part of the City of Philadelphia," in the manner

he prescribes, do not rest on the City as their *substratum*, any more than the trusts in the 5th, 20th and 21st clauses, though all bequeathed to the care of the City. They are uses which might be performed by his executors. Their *substratum* is not the City. But take away the *substratum* of the City, and what becomes of the testator's intention to provide for improving the police and diminishing the burden of taxation? Is it to be believed he there meant to provide for the comfort and safety of the citizens in any other way than upon the *substratum* of the City? Is not *the City* then as indispensable a *substratum* to the provision for the citizens, as the houses and lands, in the cases about to be cited, to the individuals to receive alms in them? In the *Attorney-General* vs. *Whitchurch*, 3 Vesey, 141, the testator devised four houses to the parish authorities "to be in the manner "and custom of almshouses for men and their wives," and £2,000 to enable them to allow to four poor men and their wives, each man and wife, £13 per annum, payable weekly or monthly. The bequest of the houses was void, ~~the will not being made twelve months before the death of the testator,~~ and the question was whether the bequest of the personalty, which the statute does not interfere with, fell with it. The Master of the Rolls, looking to *Cy près*, said the question was "to see whether there is any intention to give this fund "to the general purpose of providing for poor men and women "independent of the almshouses, or whether *an endowment* "*only* is proposed;" page 145. And he decided that "the "intention was to make an endowment of almshouses; that "there is no general intention beyond that; and therefore "the bequest, so far as concerns those almshouses, must fail "with the object to which it was attached." "It is said, "an intention to give this provision to any poor men and "women may be collected. If I could collect that intention, "I would execute it; but I cannot; and so, it is not enough "to say, it is not inconsistent with that intention, or that, if "the testator could have foreseen the failure of his object, "he would have given it to poor men and women, without "regard to the houses. Perhaps he would; but can I judi-"cially pronounce that he would; or (for such is the office "of a judge) can I fairly infer that he would, upon this will? "I cannot." Page 145. In the *Attorney-General* vs. *Davis*, 9 Vesey, 535, where there was a devise of money to buy land, and support six poor men and six poor women in the building to be erected on it, ~~and the will was not made a year~~

~~before the death of the donor,~~ the whole devise failed, as well that for the support of the twelve poor persons as that for the purchase of and building upon land. In *Chapman* vs. *Brown*, 6 Vesey, 404, the will, ~~made within a year of the death of the testator,~~ was to purchase a chapel and support a minister to preach in it. It was held wholly void, and the property went to the heir-at-law and next of kin. In *Blandford* vs. *Thackerell*, 2 Vesey, Jr., 239, the heir and next of kin took; the devise, ~~made within the twelve months~~, being for procuring a house and there maintaining a school. In *Grieves* vs. *Case*, 1 Vesey, Jr., 548, the syllabus is "where "the general object of the devise is void, to support upon an "intention of personal benefit the interest of a devisee, it "must be totally separate from that object." ~~The testatrix's death took place within the twelve months.~~ By A.'s will, she left money directed, first, to the purchase of land, on which to establish two chapels, and, then, the income of the residue to her "friend Thomas Mendham and her friend "Samuel Eastbaugh," who were to officiate in them, and "after the decease of Mendham and Eastbaugh, or the sur-"vivor of them, the interest or rents to be paid forever to "the preachers for the time being," in the two chapels. Ld. Com. Eyre said, "Here the general object was to make an "establishment for the two chapels." "It was argued with "great force that there was a personal bounty intended to "them, (i. e., Mendham and Eastbaugh.) I agree there was, "but it is equally apparent that it flowed from a confidence "in them, in the character of ministers of those chapels, and "not in any other way." "I am of opinion that if the per-"sonal bounty cannot be totally separated from the general "object," the whole fails, &c.; "their estate cannot be sep-"arated from the trust, and, if that fails, this, which is a part "of it, must fail also." Ld. Com. Ashhurst said, "It is "true the testatrix does appear to have had a particular "predilection for them, (Mendham and Eastbaugh,) from her "long knowledge of them. But what was her general "intent? It was to appoint a perpetual chaplain in these "two chapels, and this appointment of these two was only "the inchoation of that charity." "As to the case in Term "reports, we may give to it its due merit, though, perhaps, "it was not looked into as much as it might have been. "The foundation of that idea was that it was nothing more "than a bequest beneficial to the party, without annexing "to it a stipulation of preaching in the chapel." The devise

to the individuals was held to fall to the ground with the chapel. Here the testator had "a particular predilection" for the population of the old City, but was there "nothing more than a bequest beneficial to the party?" What was the "general intent?" Surely, it was to endow a municipality; and the testator's "particular predilection" for the inhabitants, and the devise for their particular benefit, fall to the ground with the municipality; and are not re-edified because the municipality and twenty-eight others are consolidated. In *Attorney-General* vs. *Whitchurch*, the case already cited from 3 Vesey, the syllabus is, "Where a charity "cannot be executed as directed, but the general purpose "appears distinct, and may be in substance attained by any "other mode, it shall be executed *Cy près;* but a personal "bequest attached to a void charity as an endowment "must fall with its principal." Says the Master of the Rolls, at page 145, "An endowment where the conduct "of the parties is under the control of the trustees, is very "different from a charity for poor men and women in general. "I cannot create another charitable object for him or apply "this to any different object, so as to be warranted in saying "I fulfil the intention." If an "endowment where the conduct of the parties is under the control of the trustees is very different" from one where it is not, and is out of the reach even of *Cy près*, what is the position of the endowment here where *Cy près* is no part of Pennsylvania jurisprudence, and where the "parties" and the "trustees" were intended, as constituent and representative, mutually to control one another? It will be observed that in these cases, "the poor men and women, without regard to the houses," might well, as said by the Master of the Rolls, in the *Attorney-General* vs. *Whitchurch*, have covered all the views of the donor. He meant to relieve the "poor men and women" and the house would equally serve his purpose, whether owned in fee or leased from year to year. It really made no difference in the accomplishment of the charity whether the real estate could be purchased or not. If it could not be purchased, it could be leased. But here, if it be true that, when the old charter was substituted by the new, the "men and women" could derive little or no benefit from the devise, these *substratum* cases have an application which is *a maxime fortiori.*

There are also modern English cases in a degree analogous to those last cited, where it has been held that the trust fails, because what is called the *particular object* of the testator's bounty having ceased to exist *Cy près* cannot aid.

Clark v. *Taylor*, 21 English Law and Eq. R. 308, decided in July, 1853. The Vice-Chancellor, (Sir R. T. Kindersley,) after stating the facts: "I must take it upon the evidence, "that, during the later part of the existence of this school, "at any rate, it was entirely Mrs. Enderby's private school. "She may have had, from time to time, from friends or other- "wise, some trifling contributions in aid, but it appears to "have been substantially maintained at her expense. The "question is, whether the gift in this will is to be considered as "a gift intended for charitable purposes generally, or whether "it was simply intended for the benefit of a particular "private charity. Now, there is a distinction, well settled "by the authorities. There is one class of cases, in which "there is a gift to charity generally, indicative of a general "charitable purpose, in pointing out the mode of carrying it "into effect; if that mode fails, the Court says the general "purpose shall be carried out. 'There is another class, in "which the testator shows an intention, not of general "charity, but to give to some particular institution; and "then if it fails, because there is no such institution, the "gift does not go to charity generally; that distinction is "clearly recognized; and it cannot be said that wherever "a gift for any charitable purpose fails, it is nevertheless to "go to charity. In many cases, it is difficult to see to which "particular class the case is to be referred, and this is, to a "certain extent, one of such cases. The testator seems to "have assumed that this school was conducted as charity "schools usually are, by means of the usual machinery, with "the treasurer or some other officer appointed into whose "hands he wished the money that he left to be paid. Did "he intend the money to be paid to provide for the educa- "tion of females generally, or did he intend merely to pro- "vide for the education, exclusively, of such as were under "the care of Mrs. Enderby? Did he intend the £60 to go "to that particular institution? (His Honor referred to the "words of the gift.) Now these words do not appear to "contemplate a charitable purpose generally, nor even gen- "erally the particular species of charity designated. A par- "ticular school appears to have been intended. If no such "school had existed, the testator could not have had the "intention to benefit the particular school, and might have "intended general charity; but here upon the facts, the "testator may have personally seen, and known, and ap- "proved this school. That could not have been the case in

"*Loscomb* v. *Wintringham;* there it was shown that no "such institution as that referred to by the testator existed: "he must have intended, therefore, some general purpose of "charity. That distinguishes this case from *Loscomb* v. "*Wintringham,* the authority of which I do not here in the "slightest degree mean to impugn. Now there having been "such a school as the testator describes, it being a mere "private school maintained by the beneficence of Mrs. "Enderby, I cannot say that the legacy given to it is to go "to the institution. The gift, therefore, has failed, and falls "into the residue."

VI. *The defendants say the consolidated charter was "imposed" on them by a Legislative Act, and that they cannot be held to conditions which have been made impossible by act of law.*

Let it be admitted that estates on condition originally possible become absolute, if afterwards the fulfilment of the condition be made impossible by the grantor, or by the act of God or of the law. This is not such a case. Though the devisee took an estate limited or conditioned to certain uses, the condition was not in abatement of the gift; it was the gift itself. These uses were not an exception to the generality of the gift; they were the estate given. "A de- "vise to A. and his heirs, upon trust, that he shall do, &c., "is a trust but does not make a condition. R. Mod. 594." 3 Com: dig. (90) title "Condition," (a, 4.) All that was given to the City was the benefit of the performance of these uses. An office was delegated of administering an estate; if not administered, which is the condition always annexed to an office, the estate does not become the absolute property of the City. In the case hereafter cited of the *Police Jury* v. *Reeves,* 18 Martin, 221, the act of the Legislature of Louisiana, which made it impossible for the parish authorities to use the donor's land according to the terms of the gift had not the effect of making the land the absolute property of the parish; on the contrary, the judgment of the Court was that it sent back the land to the representatives of the donor. The City received the estate on the condition of performing the uses, that is true; but it was the estate which went to their performance. There was no other estate. If a gift were on condition the donee went to Rome, and the law prevented his going, he would be excused compliance, and the gift would be absolute. But if the gift were to take him to Rome, and the law prevented his going, he could not claim the gift. He could not claim a gift, the only

purpose of which being to take him to Rome, had failed. The only purpose of this gift was the performance of the municipal uses; if the law has rendered their performance impossible why should the estate go to the City? If the Legislature could render impossible the performance of these uses by rendering impossible this so called condition, and the effect is to make absolute an estate which was given as a qualified estate, and this is constitutional legislation, they may alter men's rights of property at pleasure. Here is a qualified estate; if the Legislature can make it absolute by this roundabout process, they may attain the same end by the shorter and simpler process of passing a law to strike out the qualification. If the Legislature repealed the City charter, *without more*, the estate would return to the heirs of the donor. So if they repeal it to such extent that the estate cannot be used according to the terms of the gift.

But is it true in fact or law, that the charter was "imposed" on the defendants? It may be the right of a State to impose on a man the quality of a soldier, but if he voluntarily enlist, that fact is to be regarded and followed to all its consequences. It may be the right of a State to impose on a private corporation the repeal of their charter; but if they solicit and obtain the repeal, can they claim the benefit of the position of parties on whom the repeal was compulsorily imposed? If a man be divorced by the Legislature the act is "imposed" on him; but if he procured the law, it is his own act too. The evidence taken in the Court below shows the petition for consolidation of the corporators to the Legislature was accompanied by a draft of the Consolidation Act as afterwards passed; it shows the approval of this proceeding of the corporators by the authorities of the corporation; it shows the unanimous vote of the Philadelphia representatives, in both branches of the Legislature for the consolidation bill, in the form in which it was petitioned for. A comparison of the draft accompanying the petition with the act, shows them to be substantially the same; but, if they were substantially different it would be incumbent on the defendants to make the difference avail them; to show that the difference it is which renders impossible, since the consolidation, the performance of these municipal uses. No other difference could avail them. The corporators, the corporation and their representatives in the State Legislature all united to procure the act. If it is not to be regarded as the devisees' *own act*, it is because there is a fiction of law

(*fictione juris semper subsistit equitas*) which prevails over the fact.

Again, here is a charter by which a large public debt is imposed on the citizens. The City was out of debt; the surrounding municipalities were loaded with debt. Could the Legislature impose on the City, without their consent, the burdens of all the rest of the county?—Debts which were incurred by other people for their own benefit; from which the citizens of the city had derived no advantage; and for which they were in no manner liable? Is it in the power of the Legislature to transfer the debts of one county to another? From one municipality to another? Must it not have been with the consent of the citizens of the City, to subserve purposes the accomplishment of which was a valuable consideration, that the debts of the twenty-eight municipalities were assumed by the City? The presumption is that the Legislature did not commit an act of unconstitutional violence; and the evidence in the case confirms the presumption. If the fact is in proof that the defendants and the late City asked, obtained and accepted the charter of consolidation, what is the law?

So far from favoring the defendants' idea of the *imposition* of charters on the citizen, it is the other way. Charters are franchises, and municipal charters are by name a *munus*. For it the sovereign was paid so much money, when first charters were granted, and to this day, by the legislation of Pennsylvania, a *bonus*, according to a tariff settled by law, is paid for charters. Municipal charters, in England and all parts of Europe, were, in early days, sold by the king or some lesser lord to the inhabitants of a place, to enable them to protect themselves against the foreign enemy, and escape taxation and violence at home. They obtained charters by which they were authorized, to certain local purposes, to take care of themselves. But for the fact that some of the English towns had existed so long that their writings were lost, and their privileges could be traced to prescription only, there was no difference between the tenure of this local authority in the remotest times and in the year 1836, when Parliament passed the municipal corporation act. Charters are possessions, and there was no power by which they could be imposed on a place or taken away from it, except the power of the law on proof of misconduct. Rights and privileges are not imposed. A municipal charter is not imposed on people, any more than a railroad or manufacturing charter; or lands

and tenements on an individual. They were always a gift accepted by the subject, and bestowed by the King; or by the King and Parliament, where it was a gift beyond the power of the crown to make.

In the case of the borough of Helleston (see *The King* vs. *Passmore*, 3 T. R. 246), where the question was, whether the charter had or had not been accepted, Buller, J., said: "I "do not know how to reason on this point better than in "the manner used by one of the relator's counsel, who "considered the grant of incorporation to be a compact "between the Crown and a certain number of the subjects, "the latter of whom undertake, in consideration of the "privileges which are bestowed, to exert themselves for the "good government of the place." It is because the charter is a contract that acceptance of it is a fact to be proved in all proceedings against a municipal or other corporation. See the case of the city of Chester, *Rex* vs. *Amory*, 1 T. R. 584, and the case of the borough of Pembroke, *Rex* vs. *Barzey*, 4 M. and S. 253; see, also, *Bagge's case*, 2 Brownlow, 100; *Rex* vs. *Askew*, 4 Burr, 2200, 1. Willcock, who has collected many of the authorities, in his work on Municipal Corporations, thus states the rule: "Though the king "has power by his charter to create corporations, yet he "cannot impose the constitution upon his subjects without "their consent. The incorporation is intended for their ad- "vantage, yet it is accompanied with conditions and duties "on their part to which they can only be subjected with their "own acquiescence. Therefore, it is as necessary to show "the acceptance of the charter by those to whom it was "offered as that it was granted by the Crown." The attempt to violate this rule by Charles II. and James II., who got possession of, and regranted, with alterations, the charters of English towns, was one of the immediate causes of the revolution which followed. In 1836, the power to grant charters became vested in the sovereign, to be exercised with the consent of the Privy Council, on petition of the "inhabitant householders of any town or borough." Charters thus became more than ever a right, and less than ever subject to the caprice of authority. In *Rutter* vs. *Chapman*, 8 Meeson & Welsby, 1, one of the many corporation cases which have come into the English Courts since the Act of 1836; and where the question was upon the charter of the town of Manchester, four thousand of the forty-eight thousand "inhabitant householders" having petitioned for a

charter, and six thousand against it, the law of 1836 will be found commented on at great length, both by counsel and Court. Now, English municipal charters never having been *imposed* on the subject, but on the contrary being, to this day, a boon, which, to be obtained, must be first solicited and then accepted, what is the principle which governs such grants in the United States? In the *City of Patterson* vs. *The Society, &c.*, 4 Zabriskie (New Jersey) Reports, 397, the Court say: "In regard to public or municipal corporations, "sound principle requires that they should not be forced "upon the corporators against their consent. Such is the "well-settled principle in England in regard to all muni- "cipal corporations created by the Crown. Though the "king has the power to create corporations, he cannot im- "pose them on his subjects without their consent. Whether "it be an original act of incorporation, or a charter by which "the franchises of a pre-existing corporation is altered, it "must be accepted by a majority of those to whom it is "granted. *King* vs. *Amory*, 1 Term Rep. 572; Willcock "on Corp. 30. It is not denied that a municipal corpora- "tion may be, either by the Legislature or by the British "Parliament, by virtue of the plentitude of its power, im- "posed upon the corporators without their consent. It, "doubtless, may be done. Willcock on Corp. 25. But it "would be alike against the genius of our Government and "the spirit of the British constitution. It would be, in the "nervous language of Lord Thurlow, an atrocious violation "of principle, which would cut every Englishman to the bone. "Almost invariably in practice municipal charters have been "granted or altered by our Legislature, in accordance with "the expressed will of the corporators. The exceptions are "very rare. They have occurred in seasons of high excite- "ment. They cannot be reconciled to sound principle. They "are to be regarded as beacons to be shunned, not as prece- "dents to be followed. Before imposing the burdens of a "city charter upon a people, the Legislature not only may, "but ought, to require the assent of the corporators. It is "designed as a benefit; but it brings heavy burdens, which "ought not to be imposed upon a people without their assent. "The only question then is, must the consent be obtained "prior to the passage of the law, or may the charter be granted "and submitted to the corporators for their acceptance." In Pennsylvania the very case has occurred of an attempt, which was overruled by the Supreme Court, to impose a mu-

nicipal charter upon unwilling citizens. It will be found in the case of *The Borough of West Philadelphia*, 5 Watts & Sergeant, 281. In the well-known case of the *Bank U. S.* vs. *Dandridge*, Story, J., in delivering the opinion of the Court, says: "Both a charter and acceptance are vital to "the existence of the corporation. They are, however, pre- "sumed not merely from the lapse of time, but from the con- "tinued exercise of corporate powers, which presuppose their "existence. So, in relation to the question of acceptance of "a particular charter by an existing corporation, or by cor- "porators already in the exercise of corporate functions, the "acts of the corporate officers are admissible evidence from "which the fact of acceptance may be inferred. It is not "indispensable to show a written instrument or vote of ac- "ceptance on the corporation books; it may be inferred from "other facts, which demonstrate that it must have been ac- "cepted. Upon this point it is not necessary to do more "than refer to the general course of reasoning in *The King* "vs. *Amory*, 1 Term Rep. 595." In *Ellis* vs. *Marshall*, 2 Massachusetts R. 277, the Court says: "That a man may "refuse a grant, whether from the Government or an indi- "vidual, seems to be a principle too clear to require the sup- "port of authorities. That he may decline to improve his "land, no one will doubt. Although the Legislature may "wisely determine that a certain use of his property will be "highly beneficial to him, he has a right to judge for himself "on points of this nature. The fact, therefore, in the case, "that *Marshall* is benefited equally with the other owners by "the making of this street, is of no importance. In *Bagg's* "*case*, it seems to be agreed by the Court, that a patent pro- "cured by some persons of a corporation, shall not bind the "rest, unless they assent. And in Brownlow's Reports, 100, "there is this passage: "It was said that inhabitants of a "town cannot be incorporated without the consent of a major "part of them, and an incorporation without their consent "is void." In *Comberbach*, 316 Holt, speaking of a new "charter made to the City of Norwich by Henry IV., and "confirmed by Charles II., says, the new charter had been "void, if the corporation had refused it, but when they ac- "cepted it, and put it in execution, it is good. If these "principles were correct in England, in times when preroga- "tive ran high, and the Crown or the Parliament could not "force charters or patents upon the subject without his assent,

"surely in this free country, where the Legislature derives
"its power from the people, such authority cannot be con-
"tended for." In Pennsylvania most municipal charters are
obtained upon petition of the citizens, for the benefit of a
certain general statute of the State, passed to avoid the
public inconvenience of being compelled to legislate for each
particular case. But cities being not numerous it consists
with public convenience that they receive their charters, or
have them amended or consolidated by legislation *ad hoc*.
There is, therefore, no general statute for bestowing or
changing city franchises. If cities were more numerous
than townships and boroughs the rule would be the other
way, and they would be governed by general legislation,
and the townships and boroughs by legislation *ad hoc*.
Every borough or township has power of succession, can
sue and be sued, hold property, use a common seal, enact
and execute its local laws, make sanitary regulations, im-
pose fines and penalties, borrow money and impose taxes,
&c. See Brightly's Digest of the Laws of Penna., 115–118.
Till the Consolidation Act of 1854, more than three-fourths
of the population of Philadelphia lived in boroughs and town-
ships, or what were then called *districts*, which were incorpo-
rated at the request of the inhabitants, by the Courts of
Quarter Sessions. See Brightly's Digest of the Laws of
Pennsylvania, 116, where the legislation of the State on this
subject will be found to be as follows: "When application is
"made to the Court by the inhabitants of any town or vil-
"lage for the privileges conferred by this Act, it shall be in
"writing, and shall be signed by a majority of the freehold-
"ers residing within the limits of the same. It shall set
"forth the name, style and title of the proposed borough,
"with a particular description of the boundaries thereof, ex-
"hibiting the courses and distances in words at length, and
"be accompanied with a plot or draft of the same. The
"Court shall cause the aforesaid application to be laid before
"the Grand Jury when in session, and if a majority of said
"Grand Jury shall believe that it is expedient to grant the
"prayer of the petitioners, they shall certify the same to the
"Court, and if the decree of the Court shall be in conformity
"with the prayer of the petitioners, the said petition and de-
"cree shall be recorded in the Recorder's office of the proper
"county, at the expense of the applicants, and from thence-
"forth the said town or village shall be deemed an incorpo-
"rated borough," &c. "The several Courts of Quarter Ses-

"sions aforesaid shall also have power, with the concurrence "of the Grand Jury of the county, and upon the application "in writing of two-thirds of the taxable inhabitants of any "borough now incorporated, or that may hereafter be incor- "porated, to annul or alter the charter of the same, and "similar proceedings shall be had on such application, "as in the case of incorporating a borough." For town- ship charters, see Brightly's Laws of Pennsylvania, 204, 5. In the case of *Green Township*, 9 Watts & Sergeant, 22; the Supreme Court of Pennsylvania quashed the proceedings because they went beyond the petition of the inhabi- tants, and adopted a line of division for the township which was not prayed by them. In the case of *Bethel Town- ship*, 1 Barr, 101, it did not appear that notice of the view for the division of the township had been given, and the Court quashed the proceedings, saying, "that notice of the "view should be given to the inhabitants is a principle of "natural justice, and the manner of it ought to be prescribed "by rule of Court." City charters have been subjected to the vote of the citizens at the polls in various parts of the United States, among others in the City of New York, in St. Louis, in Trenton and Patterson, in New Jersey, and in Alexandria, under the Act of Congress of the 9th July, 1846, the question of retrocession being there submitted to the qualified voters of the place. The charter of the City of Philadelphia, granted by Penn in 1701, recites it to be con- ferred at the "request of the inhabitants." The citizens of Philadelphia, in their petition to be consolidated (Record, 122), make it part of their prayer that the Legislature will not submit the question to popular vote; and give their rea- sons, as follows: "The bill does not contemplate the con- "tingency of a popular vote," &c. "If a single doubt rested "upon the question, such a provision would be wise, but so "general and unmistakeable have been the evidences of the "popular will in favor of the measure, that a vote of the "people is unnecessary to decide a point which has already "been conclusively settled beyond all reasonable doubt," &c. Again, municipal charters are passed not by public but private acts of legislation, which are everywhere recognized in law as the act of the parties who procure them, and for whose benefit the legislation is. The municipal corporation bill, passed by the British Parliament in 1836, was a public act, for it related to municipal corporations generally; but the consolidation Act of the Legislature of Pennsylvania,

passed in 1854, was a private act, for it related to a particular town or towns; like acts to incorporate private companies, acts for the pecuniary relief of individuals and other private acts. "Public acts relate to the kingdom at large; "private acts to certain individuals or to particular classes "of men." Dwarris on Statutes, 629. "Acts relating to any particular place, or to divers particular towns, or to one, or to divers particular counties, or to colleges only in the universities are private statutes." Id. 629; 1 Kent's Comm. 459; 5 Com. Dig. 316, (Parliament (R. 7). "If the Legis- "lature pass an act relating to certain townships naming "them, it affects them only, because it is not a general law, "and that is the amount of the case cited from 4 Mass. 140." *Commonwealth* v. *Fullerton*, 2 Jones, 268; *Coolidge* v. *Williamson*, 4 Mass. 145; *Loper* v. *City of St. Louis*, 1 Missouri, 681. "I agree that private acts of Parliament are to be construed "according to the intention of the parties, but then that in- "tention must be collected from the words used by the "Legislature, without doing violence to their natural mean- "ing." By Lord Kenyon, C. J.; *Townley* vs. *Gibson*, 2 T. R. 705. "In a private act of Parliament the Legis- "lature only lends its aid to the agreement of the parties "in order to render it effectual, when any public reason "stands in the way." By Ld. Mansfield, Ch. J., Dougl. 406. "It is a rule that private acts of Parliament, in- "troduced only for the settlement of particular estates, "ought to be considered only as common conveyances, and "directed by the same rules of law." By Ld. Hardwicke, 1 T. R. 93, N. A. 1 Vent. 176; 5 Com. dig. 316, Act of Parliament, (R. 7.) "A statute which relates to a "particular place or town, will be a private law, though it "concerns all persons; as, if it relates to such a manor, "town, &c. 4 Co. 76, b., Skin. 350." 5 Com. dig. 316, Act of Parliament, (R .7.) "The judges will not take notice "of a private act unless it be pleaded." 5 Com. dig. 316, Act of Parliament, (R. 7.) "Statutes passed on the petition "of individuals, are considered private, in point of construc- "tion." 8 T. R., 468; 5 Com. dig., 316, Act of Parliament, (R. 7.) In the Pennsylvania case of the *Commonwealth* vs. *The Judges of Quarter Sessions*, 8 Barr, 391, it was argued that the act of Assembly, by which was delegated the power to grant municipal charters, following British example, by which the right to grant charters is found, in more than one instance, in the hands of the subject, was unconstitutional,

but the Court in their opinion say: "The erection of a town-"ship or the creation of a new district for merely municipal "purposes, or convenience in the transaction of the public "business, is in no degree similar to the exercise of law-"making power. The one is an exercise of sovereignty, the "other, in its very nature, a subordinate function;" * * * "it has never been imagined that it bore any resemblance to "the power of enacting laws. Indeed it is so entirely dis-"similar, that an elaborate attempt to show the contrast "would be a mere waste of words." In Brightly's Digest of the Laws of Pennsylvania, pages 42–3, will be found the law of private statutes, under the title "The Enrolment "Tax." "19. No private act of Assembly hereinafter de-"scribed and taxed shall be enrolled in the office of the sec-"retary of the commonwealth, or published, or have the "force and effect of law, until the party asking and requiring "the same shall have paid into the treasury of the common-"wealth the following sums, to wit: 20. On every law incor-"porating or chartering any bank," &c., so much. "21. "Manufacturing companies," &c., so much. "22. Railroad "companies," &c., so much. "23. On every law,* &c., so much. "24. Savings institutions," &c., so much. "25. "On every law of divorce," &c., so much. "26. Private es-"tates," &c., so much. "27. On every law changing the "name," &c., so much. "28. Telegraph companies," &c., so much. "29. Every county hereafter to be formed shall "pay an enrolment tax of five hundred dollars to the Com-"monwealth, which said tax shall form a part of the sinking "fund for the liquidation of the State debt."

VII. *There is no ground for the defendants' position, that this devise being to a charitable use, violation of the will does not affect the title of the devisees; nor would the English rule of Cy près afford the least aid to such a position.*

The books show that the case never happened where either chancery or the *parens patriæ* interfered to aid a charity which was like to fail by the act of the devisee. To let the devisee imperil, or make uncertain or impossible the performance of the testator's purposes, and then substitute his own, would be a novelty. Taking the rules as they are found in cases where the charity stands as this does, since the consolidation act, the legal conclusion is, that the defendants have *rejected the devise*. *Cy près*, as a rule, bases itself, according to the cases and text writers, upon a supposed tenacious adherence to the testator's intention. Un-

* "granting Corporate powers &c" where the authority &c "is or may be vested in any Court of the Commonwealth" &c.

controllable circumstances interfering with the will going into effect as written, it is carried out *Cy près*, as near as possible to the intention; the general intention is observed, the special intention being no longer to be reached. But to permit the devisee to refuse to carry out the will as written, or for reasons good or bad, but, always turning on his own inclination or interests, to interpose circumstances to the prejudice of its being carried out, and make that a reason for reconstructing the devise would be to abuse the rule of *Cy près* to purposes exactly contrary to the law. No charity would ever go into effect as the devisor designed, if the devisee could substitute his own contrivances. To invoke the aid of the *parens patriæ* or the Chancellor to protect a devisee in such ways is unheard of. The parental office would be to prevent the wrong or punish it, not to reward and make it good. *Cy près* is professed to be carried into effect "without infringing upon the rules of law." "The Court," said the Master of the Rolls, speaking of it, in the *Attorney-General* vs. *Whitchurch*, 3 Vesey, 144, "will not administer "a charity in a different manner from that pointed out, unless "they see that, though it cannot be literally executed, "another mode may be adopted by which it may be carried "into effect in substance, without infringing upon the rules of "law." In the *Attorney-General* vs. *Sir John Platt et al.*, Finch, 222, the heir of the donor, Platt, had entered into an agreement with the donees, the Master, Fellows and scholars of St. John's College, Cambridge, in derogation of the gift as devised; but the Lord Keeper Finch declared that, "The "College might have waived the charity, yet they cannot "alter it by any agreement, because, in effect, that would "have made them their own founders, and to hold the charity "upon terms of their own making. Therefore, since the "College ought to take the charity as 'tis given, or to leave "it to the right heir, and have done neither, but have made "a special agreement with the father of the defendant, that "agreement must certainly be void, because all those who "were parties to it acted under a clear notice of the will," &c., "they must either accept them upon such terms as the "donor hath appointed, or totally relinquish such gifts." *Man* vs. *Ballet*, 1 Vernon, 42: "Upon exceptions to a "decree by the commissioners for charitable uses, the chief "matter insisted upon was this: Here were several distinct "charities given to a parish, *viz.:* such a farm, worth £12 "*per ann.*, for repairing the church; another farm, worth

"£6 *per ann.*, for mending the highways, and so much to "the poor, &c.; in all, £40 *per ann.* The complaint against "the trustees of this charity was, that the church had been "out of repair, and the rents of the said farm of £12 a "year were not applied for the repairs of the said church, "but a levy rate had been raised on the parishioners for such "repairs." * * * "The truth of the case fell out to be, "that they had applied this money for the finding of a "*lecturer*, and had allowed him 10*s.* a day, there not being "then any one to officiate within the parish; and it was urged "that this was in ease of the whole parish, who otherwise "must have found a minister, and so it was the same thing to "them whether they paid their money for the church or "minister. But the Lord Chancellor said, if it should be "admitted that for parochial charities, the parishioners "might, by agreement, change and apply the charities as "they thought fit, it would be a great step towards destroy-"ing all charities, and his decree was accordingly." *Attorney-General* vs. *The Margaret, &c.*, 1 Vernon, 55, and 1 Cases in Equity, abridged, 99: "The case was, a man having de-"vised £50 per ann. for a lecturer in *polemical* or *casuistical* "divinity, so, as he was a bachelor or doctor in divinity, "and *fifty* years of age, and would read five lectures every "term, and at the end of every term would deliver fair "copies of the same, to be kept in the university, and in "default of such a lecturer, he gave that £50 per ann. to "College in Oxon. Now, upon this information, "the university of *Cambridge*, with the consent of the heir-"at-law would have had the rigor of the qualifications "mitigated, viz.: That a man of *forty* years of age might be "made capable of this salary, and that three lectures every "term might serve turn, and that if he delivered such fair "copies of his lectures once a year it should be sufficient. "But the Lord *chancellor*, though no one made opposition to "it, refused to intermeddle in it, and said they should be "held to the letter of the charity, and that the heir had no "power to alter the disposition made by his ancestor." *The Attorney-General* vs. *Earl of Mansfield*, 2 Russell condensed, 213, was the case of a charity school, founded as a "Free Grammar School," in the seventh year of Queen Elizabeth, by Sir Roger Cholmeley, in which, under George IV., instead of teaching the charity scholars Latin and Greek, which was taught in such schools in the days of Elizabeth the trustees had substituted English. Further, it appeared that, "so far

"back as living memory could reach, the school had been "merely a place for instruction in English writing and arith- "metic." Lord Eldon. "There have been a great many cases "in this Court, undoubtedly, in which, when the particular "things prescribed to be done could no longer be carried into "effect, a change has been made: a change approaching as "near as might be in what can be executed, to that which can "no longer be executed; and such change has been sanctioned "by the Court: but if the original trusts are as capable of "being executed at this day as at the time of their original "creation, the only question is, whether there was authority "to change the nature of the trust? Now, looking at the "instruments, it appears to me extremely clear, that it was "the express intention of Sir Roger Cholmeley that the "original nature of this institution should be preserved for "ever." p. 220. * * "If the Court is obliged to say that "this school is in the sense in which these words have always "been used here, a free grammar school, the individual who "holds the great seal, even if he were perfectly convinced that "a free grammar school could be of no use, or of little use, "would be bound to carry on the foundation as the author "of the foundation meant it should be administered; and "there is no power, at least none here, to alter that founda- "tion, with a view to any superior benefit which might arise "from an institution of a different nature, however desirable "it might be, if it were within the scope of my authority to "substitute the one for the other." p. 223. An attempt had been made to procure an act of Parliament to relieve this charity, and part of the syllabus is, that "Trustees of a "charity cannot be allowed the costs of an unsuccessful "attempt to obtain an act of Parliament to enable them to "administer the property of the charity on an improved "plan, though their failure arose from accidental circum- "stances, and though their motives were fair and proper." p. 214.

In *The Attorney-General* v. *Whiteley*, 11 Vesey, 241, 251, Lord Eldon said: "The reason of my opinion is, that I do "not apprehend it is competent to this Court, as long as it "can find any means of applying the charitable fund to the "charity, as created by the founder, upon any general "notion that any other application would be more beneficial "to the inhabitants of the place, to change the nature of "the charity." *Ex parte Bolton School*, 2 Brown's Ch. Cases, 662. "By a private Act of Parliament for regulating

"Bolton School, the number of trustees was limited to "twelve, of whom seven were to constitute a quorum; and "there was a clause in the act, by which it was enacted that "if any of the constitutions or provisions in the act should "be found to be inconvenient or impracticable, the trustees "might apply by petition to the Lord Chancellor, who "might, in a summary way, vary such constitutions or pro- "visions. It being found impracticable to gather together "so large a number as seven out of twelve trustees, inas- "much that no meeting had ever been had, all the trustees "except two (who consented to the application) applied "now to the Lord Chancellor, either to increase the number "of the trustees to sixteen, or to make the quorum consist "of five only. But the Lord Chancellor thought this not "within his jurisdiction, which, though it might extend to "varying by-laws, or particular provisions, did not comprise "a power to alter the general constitution of the trust itself, "and, therefore, that the application must be to Parliament." "Corporations were always," says Grant, page 117 of his work on Corporations, "strictly held to the terms and con- "ditions upon which the devise to the charitable use was "made. If the corporation refused to accept the lands on "the terms on which they were given, the Court of Chan- "cery obliged them to relinquish to the heir of the donor; "nor was it permitted that the terms imposed by the donor "or testator should be altered by agreement between the "heir of the donor and the donees." In *Crofts* v. *Everts*, Tothill, 61, 62, the heir re-enters when the feoffee to charita- ble uses alienes. In *Magill* v. *Brown*, page 324 Brightly's Reports, Baldwin, J., says: "A testator by will directed "lands which were devisable by custom to be sold by his "executor, and the money to be distributed for the good of "his soul; the executor held the land for two years without "a sale, which the Court held to be a breach of the intention "of the testator, and they construed the will so as to make "a condition, as such appeared to be the intention; the heir "entered for the breach, and recovered. 38 Ass., pl. 3, Lib. Ass. 221; Plowd. 345, 523." "Every man," says Lord Holt, in *Philips* v. *Bury*, 2 Term Reports, 351 and 358, "is master of his own charity, to appoint and qualify it as "he pleaseth." The more modern cases adhere equally closely to the rule. The Master of the Rolls, Sir John Romilly, says, in 13 Beavan, 280, *The Attorney-General* v. *The Governors, &c., of the Sherborne Grammar School*, which

was established in 1550, "This court has authority to redress "a breach of trust where the objects of the founder have been "prevented or neglected. It has also authority to direct a "scheme in order to enforce the more complete attainment "of those objects. This Court has a further power and "authority, where the objects contemplated by the founder "cannot be carried into effect, to direct the application of "the revenues of the charity to promote objects in accord- "ance with the spirit of the original foundation, the actual "compliance with which has become impossible." That is to say, to *Cy près*. "But it has no authority to vary the "original foundation and to apply the charity estates in a "manner which it conceives to be more beneficial to the "public, or even such as the Court may surmise that the "founder would himself have contemplated could he have "foreseen the changes which have taken place by lapse of "time." Lord Chancellor Cranworth says, in *The Attorney-General* v. *Calvert*, 23 Beavan, 254, 255, "The first principle "which is applicable to all these charities, without excep- "tion, is that the intentions of the founder are to be carried "into effect as far as they are capable of being so, and so "far as they are not contrary to law, using the word law in "its proper and widest signification, as including the pre- "cepts of religion and morality." "If the Court finds a "clear trust exprest on a will, no length of time," (the will was in 1579), "during which there has been a deviation from "it, can warrant this Court, as I apprehend, in making a "decree in contradiction to such a trust." *Attorney-General* v. *The Corporation of Rochester*, 5 De Gex, Macnaghten, and Gordon, 322. "All such cases"—cases where, by the in- crease of the value of land, or other cause, there is a surplus income beyond the sum devoted to the charity, and the question is, the disposition of the surplus—"are questions "of the intention of the donor, to be determined by the con- "struction to be put on the language which he has assigned." *Attorney-General* v. *The Dean and Canons of Windsor*, p. 36 Digest, 7 Jurist (1861), part 1, new series. "Where "an intention appears in a testator's will to give the *whole* "of a fund to a charity, the objects whereof are not sufficient "to exhaust the *whole*, the Court will apply the residue as "nearly to the testator's designation as it can; but the "Court will not supply the want of objects, without some "apparent intention to guide the Court, which cannot go so "far as to dispose of a fund merely on seeing a *general* in-

"tention in the testator to die testate as to the whole." Shelford on Mortmain, 650, quoting *The Attorney-General* v. *Painter*, 2 Cox, 51. "Corporations were always held "strictly to the terms and conditions upon which the devise "to the charitable use was made," says Grant, in his work on Corporations, page 117. "One ground on which this strictness "is adopted, is that the intention of the testator, with respect "to the appropriation of the proceeds of his bounty, must "be rigorously adhered to, and that to allow of any discre- "tion in the corporation to depart from the testator's plan, "would be constituting them judges in their own cause, with "the strongest possible bias against the testator's will." "A "charity must be accepted upon the same terms upon which "it is given, or it must be relinquished to the right heir; for "it cannot be altered by any new agreement between the "heir of the donor and the donees. And where several dis- "tinct charities are given to a parish for several purposes, "no agreement of the parishoners can alter or divert them "to any other uses." 2 Story's Eq. Jur. § 1175.

Upon these citations the plaintiffs rely to show the defendants are held to the substantial performance of these uses, being a charity, as closely as if they were not a charity; and that the defendants cannot, if they themselves have caused the trust to fail, or the condition to become impossible, expect the aid of equity in their new position. The test question is, would equity have countenanced, *before* the consolidation act, the transfer of the protection of these uses from the old city to the county? If not, equity will give no countenance to their transfer *afterwards*. In the Dartmouth College case, the Court held that to swamp the power of trustees appointed by the donor, and make of them a minority only; to take from them the full authority they were given, and reduce it to nothing but a right to vote against the newly appointed power, always strong enough to out-vote them, was to do more than change the trustees; it was to alter the trust.

VIII. *If there be with the aid of Cy près, the English rule, as alleged by the defendants, that gifts to charity do not fail, the books show that in carrying it out they make strange distinctions.*

The following is part of a note of the reporter to the case of *Loscomb* vs. *Wintringham*, 13 Beavan, 89. "NOTE. "The following, amongst other bequests, have been held "void as charitable gifts: 'benevolent purposes,' *James* vs.

"*Allen*, 3 Mer. 17; 'objects of benevolence and liberality,' "*Morice* vs. *The Bishop of Durham*, 9 Vesey, 399, affirmed "10 Vesey, 521; 'charitable or other purposes,' *Ellis* vs. "*Selby*, 7 Simons, 352, and 1 Myl. & Cr. 286; 'benevolent, "charitable, and religious purposes,' *Williams* vs. *Kershaw*, "5 L. J., (N. S.,) Ch. 84, cited 1 Keen, 232, and 1 Myl. & "Cr. 293, 298; 'private charity,' *Ommany* vs. *Butcher*, "1 Turn. & Russ. 260; 'for charitable or public purposes,' or "'to any person or persons,' as his executors should think "fit, *Vezey* vs. *Jamson*, 1 Sim. & St. 69; 'for such uses as "trustees should think fit,' *Fowler* vs. *Garlike*, 1 Russ. & "Myl. 232; 'to such persons as trustees should think proper,' "*Gibbs* vs. *Rumsey*, 2 Ves. & Beames, p. 295; 'to buying "such books as might have a tendency to promote the inter- "ests of virtue and religion, and the happiness of mankind, "and distributing such books,' *Browne* vs. *Yeall*, 7 Ves. 50, "Note 76, p. 52, referred to in 9 Vesey 406, 10 Vesey 27, "Hargrave on the Thellusson Act, 22, and 2 Jurist, Augt. "70, 162, 163; '£6,000 for a hospital, to increase till it "amounted to [blank] for supporting [blank] boys,' *Ewen* "vs. *Bannerman*, 2 Dow & Clark 74; to Roman Catholic "priests for prayers for the repose of the testatrix's soul, "*West* vs. *Shuttleworth*, 2 Myl. & K. 684; 'for the relief of "domestic distress, assisting indigent but deserving individ- "uals, or encouraging undertakings of general utility,' *Ken- "dall* vs. *Granger*, 5 Bevan, p. 301." ~~In the *Attorney-General* vs. *The City of London*, 3 Brown's Cases in Chancery, 171, the charity, which was to teach the infidels in New England and Virginia, failed when the Indian race was extinguished. In the *Attorney-General* vs. *The Bishop of Landaff*, cited in 2 Mylne and Keen, 580, the charity failed which was to redeem the slaves in Barbary.~~ In *Russell* vs. *Kellett*, 3 Small and Gifford 268, the testatrix had be- queathed, by will dated in 1805, "to such poor widows or "credible, industrious unmarried women, upwards of forty "years of age, residing in the town of Ulverstone, and in "the several parishes of Urswick, Pennayton and Dalton, "and having no relief from those places, respectively the "sum of £5 each," &c., and in 1855, the objects of her bounty, not being to be found, the Court was asked to *Cy près*, but the Vice-Chancellor said: "The doctrine of *Cy près* "means that where there is a general charitable purpose for "an object mentioned by the testatrix, of such a kind that "the Court can satisfy itself that some other object can be

"found, in a reasonable degree, nearly answering such "charitable purpose, then there should be an application in "favor of that object. But in the present case, there is "such a particular and singular definition of the objects, as "makes it impossible for the Court to find any other object "so nearly answering a general purpose as to justify it in "saying that the doctrine of *Cy près* applies." In *Cherry* vs. *Mott*, 1 Mylne and Craig, 23, the testator directed his executors to contract with the Governors of Christ's Hospital for the perpetual presentation of a boy to that charity. The Governors refused to sell a right on the terms offered by the executors. The Court holding the case not to be within the range of *Cy près*, the particular charity having failed, said, in the course of their opinion: "Another objection is, that "this is a gift for a particular purpose, which cannot take "effect by reason of the refusal of the Governors, and that "it, therefore, fails altogether. In support of this proposi- "tion, reliance is placed on the case of *Attorney-General* vs. "*Bishop of Oxford*, which is fully stated in the judgment "in *Corbyn* vs. *French*. That was a case of a legacy given "to build a church at a particular place, and the bishop and "parson objecting, the court held that a church could not "be built elsewhere. In *Corbyn* vs. *French*, the legacy was "to the trustees of a chapel, for the purpose of discharging "a mortgage thereon. The mortgage, it turned out, had "been previously paid off by other means. Lord *Alvanley* "decided that the legacy was void by the Mortmain Act, "and that it was also void because the object intended could "not be effected, and there was no ground to apply to any "other purpose. In *Attorney-General* vs. *Andrew*, there "was a gift to *Trinity College, Cambridge*, upon condition "of the College founding scholarships for persons educated "at Merchants Tailors' School. The College refused to "accept the legacy upon the condition imposed. Lord Ross- "lyn did not decide whether the legacy could be executed "*Cy près*, but referred it to the Master, to receive a proposal "on the part of the Merchants Tailors' School for the estab- "lishment of a charity within the terms of the founder's will. "In *Attorney-General* vs. *Boultbee*, Lord Alvanley approves "of *Attorney-General* vs. *Bishop of Oxford*, and lays down "the distinction between legacies to charities which fail "because they cannot be executed, and those which the "Court executes *Cy près*. He says if the intention cannot "be extended literally, the Court will adopt a mode con-

"sistent with the general intention, so as to execute it, "though not in mode, in substance. In *Mills* vs. *Farmer*, "Lord Eldon, in discussing the doctrine of *Cy près*, considers "the rule as applicable to the mode and not to the substance "of the legacy, though certainly in a very extended sense; "for in many cases where the mode fails, the Court con- "siders charity as the legatee; and therefore the Court "applies a practicable and legal in the place of an imprac- "ticable and illegal mode. In this case, however, there "is no gift, except in the direction to do that which cannot "be effected. It is not within the principle of those cases "in which the Court executes a general purpose *Cy près*, "the particular mode being impossible." In the *Attorney-General* vs. *Minshull*, 4 Vesey 14, the Master of the Rolls said: "Formerly, the doctrine of *Cy près* was pushed to a most "extravagant length, but that is now much restrained. If "the charitable object is incapable of taking place at the "time of the testator's death, the Court is not to look out "and substitute another, as they did formerly. Thus, in the "case of Wheatly Church, it was pressed that the testator "had a rage for building churches anywhere. Lord Kenyon "said, there was no such object; it was intended only for a "particular parish; and as it could not take effect there, it "could not be anywhere else." Shelford in his work on Mortmain, page 648, says: "If there is a legal purpose ex- "pressed, which owing to particular circumstances cannot be "executed, the Court will not execute the charitable purposes "*Cy près*, by directing the fund to be applied to another "charity." Such is the case now before the Court; "a legal "purpose expressed, which, owing to particular circum- "stances, cannot be executed." *Cy près* would not reach it.

IX. *What are the rights here of the representatives of the testator?*

See *Wheeler* v. *Smith*, 9 Howard, 55; *Fontaine* v. *Ravenel*, 17 Howard, 369; *Jones* v. *Allen*, 3 Merivale, 17; *Ommany* v. *Butcher*, 1 Turner and Russell, 260; *Attorney-General* v. *Sibthorp*, 2 Russell and Mylne, 107; *Ellis* v. *Selby*, 10 English Chancery Reports, 92. If any object shall "appear to have become extinct, the portion bequeathed "to such object must fall into the residue as a lapsed legacy." *Magill* v. *Brown*, 1 Baldwin, as cited by the Court in *Fontaine* v. *Ravenel*, 17 Howard, 390; 2 Story's Eq. Jur. § 1156: "If the testator meant to create a trust and not to "make an absolute gift, but the trust is ineffectually created

"or is not expressed at all, or fails, the next of kin take. "On the other hand, if the party is to take himself, it must "be upon this ground, according to the authorities: that the "testator did not mean to create a trust, but intended a gift "to that person for his own use and benefit, for, if he was "intended to have it entirely in his own power and discre- "tion, whether to make the application or not, it is abso- "lutely given." Lord Eldon in *Morice* v. *The Bishop of Durham*, 10 Vesey, 535. Gift by the crown to a town to keep in repair its walls and streets; when walls to defend towns go out of use that part of the gift reverts to the crown. *Attorney-General* v. *Mayor of Galway*, 1 Molloy, 110; *Attorney-General* v. *Shoemaker*, 6 Beavan, 230. If individuals can hold possessions, subject to such restrictions reserved to the grantor as perpetual ground-rents, perpetual building restrictions, or as tenants of the Manor of Dale, or elsehow, so *a fortiori* can corpórations. It accords with the quality of their inferior and artificial being, and if there arise a doubt of the extent of their rights, it is resolved against the corporation. *Charles River Bridge* v. *The Warren Bridge*, 11 Peters, 544; *U. S.* v. *Arredondo*, 6 Peters, 738–9; *Perine* v. *The Ch. & Del. Canal Co.*, 9 Howard, 184. It accords, too, with the well-being of society, and the institutions of the country, that as between the donor and a *corporate* donee, the old rule of law should be strictly enforced, by which the donee's attempt to create a greater estate than was given, was regarded as fraudulent, and entitled the reversioner to take back his gift. A rule especially to be respected when the attempt is to enlarge the estate at the expense of a useful and necessary limitation, without the restraint of which the estate would be wasted. Property held absolutely by municipal corporations is wasted; and so it must be with the possessions of all great public bodies. What they own in limited ownership for streets, parks and other designated objects, is, in a degree, well applied, and profitable to the public. All corporation property is held, more or less, conditionally. Corporations can take for no other than corporate, which are limited purposes; and once they could not take land at all, without a license, or alien it under any circumstances. Of no existing corporation, either in England or any of the United States, can it be said that they hold unrestricted. *McDonogh* v. *Murdoch*, 15 Howard, 413; Grant on Corporations, 136. Had the old City held this property without restriction they could

have enlarged the uses to the new. But to the contrary is the decision in Soohan's case. "It is not the province of this court," said the late Chief Justice, delivering the opinion in *Perine* v. *The Chesapeake and Delaware Canal Co.* 9 Howard, 189, "to enlarge the powers of a corporation because circumstances have changed." As the courts will interfere to prevent the majority of a private corporation using a fund to preach religious dogmas contrary to the will of the donor, (*Miller* v. *Gable*, 2 Denio, 492,) so they will take lands from a municipal corporation, when they can no longer be used to the ends to which they were given.* Two cases to this point are cited by Kent in his fourth volume, pages 126 and 127, one from Massachusetts,† the other from Louisiana. Both seem to rule the very point now before the Court. *Police Jury* v. *Reeves*, 3 Condensed Rep. in the Supreme Court of La.: A. B. gave to the parish a piece of land to erect the court-house on. The authorities took possession and erected one of the buildings. Afterwards, by vote of the citizens, as permitted by the Legislature, the site of the public buildings was fixed in another place. The Court held the gift was made "on the condition that the court-house should be placed on the land given," and the party claiming under A. B. recovered back the land. The case is thus stated by Kent, Comm., vol. 4, page 126. "If "land be given on condition that the public buildings of the "parish be erected thereon, it has been held to revert to the "donor if the seat of justice of the parish be removed under "the sanction of an Act of the Legislature, passed subsequent "to the grant." *Haydon* v. *The Inhabitants of Stoughton*, 5 Pickering, 528. Devise of real estate to a town for the purpose of building a school-house. The words of the devise were as follows: "Both of the above pieces of land, (or money "instead of the last piece,) I give to the said town for the "purpose of building a school-house for the use of a free "grammar-school, (or other school as said town may direct,) "*provided*, said school-house is built within one hundred rods "of the place where the meeting-house now stands." The school-house was not built, and at the expiration of twenty years, the residuary devisee recovered, "on the ground of non-compliance in a reasonable time with the condition," says Kent, *ut supra*. In these two cases, the municipal corporations *rejected* the devise; finding, as the defendants here, the burden greater than the benefit. To build the school-house, or the court-house, did not comport with public conve-

* See 6 Vin abr Corp 1 Pl 3.

† followed by another in 21 Pickering 225 - Austin vs Cambridgeport parish.

nience, as here it did not meet the public views to forego consolidating the municipality; and in both cases, as here, the devises were rejected years after they had seemed to be accepted. The heir-at-law, whose position is always strong, who is not to be disinherited *by straining*, say the books, is stronger in the United States than he is in England, says Tilghman, Ch. J., in *French* v. *McIlhenny*, 2 Binney, 20; because the right of all the children to inherit is a stronger, and less artificial, right than that of the oldest son alone. In 3 P. Wms. 145, the case of *Attorney-General* v. *Rigby*, there was a charity in favor of poor persons, in the form of a rent-charge granted out of a manor, and afterwards the manor was sold. The heir of the grantor, not the vendee, had the nomination of the poor persons. The title of a corporation to its lands is always subject to the right of the heir, even of a vendor who has sold to the corporation the lands for valuable consideration; when the corporation, being dissolved, can retain them no longer. They can hold, by the nature of their organization, in no other way than subject to the reversionary title of the heir. In the *Dartmouth College Case*, Washington, J., said, there was an implied contract that the "reversionary right of the founder to "the property with which he had endowed it, should be pre-"served inviolate." In the *Attorney-General* v. *Mayor of Galway*, 1 Molloy, 103, the Irish Chancellor said, "Lord "Eldon always quarrelled with the doctrine of *Cy près*. He "used to say, when the objects of the bounty have failed, why "should not the Court have said restore it to the family of the "donor?" In case of gifts to corporations, (probably not when they are municipal, or when there are overseers and directors, but the exception does not disturb the rule,) the heir retains, in the absence of special appointment, the right of visitation or control over the uses of the gift. Grant says, at pages 109, 110, of his work on Corporations: "It "seems necessary to remark that the estate which a cor-"poration aggregate has in its lands does not seem to be a "fee simple absolute, but to be conditional upon the main-"tenance of the succession; for upon failure of the succes-"sion, as in consequence of death of all the members, or "surrender of charters, or dissolution from any cause, the "lands of the corporation revert to the donors, this being, "as the Courts have observed, the only instance in which a "possibility of reverter could remain after a fee granted. "There is something, therefore, quite peculiar in the nature

"of the 'fee' which a corporation takes by a grant or de-"vise." It is true that in England, (though no such cases are known,) the doctrine of *Cy près* might possibly be applied, should a corporation holding lands to charitable uses be dissolved, and thus no longer be capable of using the fund. But whether even the rule of *Cy près* would deprive the heir of his reversion when the charity was to municipal uses, and the municipal corporation was both trustee and beneficiary, thus apparently leaving the case open to the full operation of the general rule in favor of the heir, may be doubted.

X. *If the municipal uses have disappeared, does the "remainder of said residue" all go to the uses of the College?*

In the Court below the defendants took the ground that the legal effect of the fact that these municipal uses could not be performed, since the consolidation, was that the portion, applicable to them, of the residuary fund, went over to the College. The position was that the "remainder of said residue," devised to the College and the municipal uses, being devised to two charities, if one could not take its share, the whole went to the other. They attempt to fortify themselves with the English cases, where it has been held that when land is given to pay so many pounds a year to a preacher, or other servant of charity, and the land increases in value, yielding more than the amount named by the testator, the additional income does not revert to the donor, but is all applied to the same charity, or by *Cy près*, to a similar one. Also, with Pennsylvania cases, where it has been ruled, as in *Pickering* vs. *Shotwell*, 10 Barr, 28, and *Witman* vs. *Lex*, 17 Sergeant and Rawle, 93, that if a *discretionary power* over the application of the fund be vested in the trustee, he may exercise his discretion by giving certainty to uses otherwise uncertain, or giving all to one of two charities, the other being out of reach; and where it has been ruled, as in the case of the *Domestic Missionary, &c., Society's Appeal*, 6 Casey, 436, that a devise to a congregation or school, however uncertain the designation, obtains certainty by going to the hands of the "superior," as he is called, for example, the clergyman of the congregation, or schoolmaster of the school. The defendants relied, also, on the Statute of Templars, passed in the fourteenth century, under Edward II., by which the lands of the religious order of Knights Templar, when the order was suppressed, were not allowed to revert to the lords of whom they had

been held, notwithstanding the opinions of the judges that they "might well and lawfully, by the law of the realm, "retain the aforesaid lands as their escheats;" but were given by the Act to the Knights of St. John, another religious order. These were the defendants' authorities. They would be useful, if there were here "discretionary "power," given to the City by Mr. Girard, to apply the fund to the municipal uses *or* the College (as in *Pickering* vs. *Shotwell* the trustees were empowered to apply the fund, "either for a supply of good books *or* the support of a "school," page 28 of 10 Barr); or, if there were a rule of *Cy près* in Pennsylvania, or, if an Act of the Legislature could take men's property from them, like an Act of Parliament; or, if the heirs-at-law claimed because the lands of Mr. Girard had so increased in value as to exceed the occasions of both College and City. But no such case is before the Court; and the defendants are left to maintain their position, finding support for it in the words of the will and the intention of the testator, as there expressed; at the same time assuming, as they do, and must, that the College is not limited to the real estate in Philadelphia and the Schuylkill Navigation Company's stock. What, then, was Mr. Girard's purpose, as expressed in the will? Could he have intended, in this event of the failure of one of the charities, to give to the other more than they could use? They already had all they could use; was this new event to give them more? He leaves the remainder of the residue to three designated uses, one the College, and the other two municipal; directing that the fund should not be applied to the two municipal uses until "after providing for the College, as hereinbefore "directed, as my primary object." The fund is to serve the College, to the satisfaction of the College wants, before it is applied to municipal needs. Such is the defendant's position. But how can they claim more for the College, when that more is more than they want, because the event has occurred of the disappearance of the municipal objects? They already had all they want? All the appellant's claim is what the College cannot use and do not want. The College is not the poorer for the portion of the fund which cannot be used going to the heirs-at-law. Nothing is taken from the College. Their condition is what it was; they are undisturbed owners of the fund to the last dollar of their wants. If what they do not want, and the testator did not give them, is to go to them, it must be by some ex-

aggeration of the rule of *Cy près*, hitherto unimagined. If it be true that in England the rule, *once a charity always a charity*, would bar the appellants from the unused remnant of the fund, it must be because the Chancellor or *parens patriæ* would apply it to some similar charity to that to which it was devised.

The plaintiffs further submit, under this head, that, not only the remainder of the residue cannot be applied to the College exclusively, the municipal uses being out of the way, as contended by the defendants, but it cannot be applied, *as among the municipal uses*, in any other way than in their order designated by the testator. The will appoints the order of application. 1st, 2d, 3d. 1st to the College, 2d to the Police, 3d to improve the City property and the general appearance of the City itself, and in effect to diminish the burden of taxation. The answer shows (Record, pages 84–8) that under the old City, from the year 1834 to 1845, both inclusive, the surplus revenue from this remainder of the residue was applied to police, in sums varying from upwards of $6,000 to $45,000, each year. If the municipal objects fail the whole fund does not go to the College. If one municipal object fails it does not go to the other. The defendants, here as everywhere, are met by the question whether the uses of the will were not all, once, capable of performance, and whether they would not now be, but for their own act; whether they can themselves make some of the uses impossible, and claim execution in part? If but for the consolidation all the municipal uses could be performed, can the defendants claim since the consolidation to perform only one of them? But it is not merely that they cannot claim under their own wrong. Decided cases are against them on other doctrine. In *Chapman* v. *Brown*, already cited, where, under the mortmain statute, the provision for purchasing a chapel failed, and with it, as the *substratum*, the provision for supporting a minister for the chapel, the testatrix proceeded to say, "if any further overplus should remain she desired that "the same may be laid out in such charitable uses as her "executors should think proper;" (6 Vesey, 404) an object clear of all difficulty under the statute; an overplus independent of the chapel and the minister; neither the statute nor the *substratum* rule in the least affecting it. The Master of the Rolls said (page 410), "The question is whether that "ulterior bequest is to fail because the prior bequest cannot "take effect; it is quite uncertain what the residue would

"have been, and therefore it is void for that uncertainty. "She had no view to any residue but a residue to be consti- "tuted by actually building a chapel. She contemplated no "residue but with reference to that. It is impossible to as- "certain it in the only manner in which she meant it to be "ascertained. It is impossible for the Court to apply it. "Therefore the whole of this disposition is void. Declare "the devise and bequest for those charitable purposes void, "and that the real estate belongs to the heir-at-law, the per- "sonal to the next of kin."

In a similar case, *The Attorney General* v. *Davies*, 9 Vesey, 546, on an appeal from the Master of the Rolls, Lord Eldon said "if the primary gift fails the secondary gift being totally "uncertain and fluctuating from time to time, the whole must "fail." * * "If it cannot be distinguished how much was "for the almshouses and how much for the school, it is very "difficult to divide it and to make it good in part and not for "the rest. Upon the whole, therefore, the decree is right."

In a more recent case of the same class, *The Attorney General* v. *Hinxman*, 2 Jacob and Waker, 270, the residue had been devised in the following words; (pp. 270–1,) "and "upon this further trust that they do pay, apply and dis- "tribute the residue, if any of the said interest and produce, "after payment of the expenses of the said school as afore- "said, unto and amongst such poor families and persons, "parishioners of and residents in Week, aforesaid, at such "times and in such proportions as the said minister, church- "wardens and overseer, shall think proper." The Master of the Rolls said (p. 277), "We cannot here separate it, as in "*Attorney General* v. *Parsons*. There the bequest was for re- "building, repairing, altering *or* adding, to the almshouses; "the word *or* giving a discretion to employ it in either way, "and the Lord Chancellor thought that he was at liberty to "confine it to the former alternative alone. But it is quite "different here; no such discretion is given; the trustees "would be bound, if the house was out of repair, to appro- "priate part of the fund to it. Then how much was to be "thus applied? I should be very glad if, though that sum "is unliquidated and unascertained, the subsequent bequest "of the residue could take effect; but the authorities show "that when the first gift is to a void charity, and the quantity "is undefined, the bequest of the residue fails." * * In *Chapman* v. *Brown*, the same point is thus put by the Master of the Rolls; "If it could have been reduced to any

"certainty how much would have been employed by the ex-
"ecutors for the other purposes, the residue ought to be em-
"ployed under this last direction, viz., for charitable pur-
"poses generally. I have considered whether that can be
"ascertained by a reference to the Master to see how much
"would have been sufficient for the chapel; but upon con-
"sideration it is quite impossible to give any directions that
"would not be vague and indefinite to a degree almost ridicu-
"lous;" * * "it is quite uncertain what the residue would
"have been; and therefore it is void for uncertainty."

Mr. Girard does not say, I give to the first municipal use, and its wants and those of the College being supplied fully, then to the second; nor does he say I give, at discretion of the City, to No. 1 and No. 2. He gives in due succession to No. 1 the College uses, and Nos. 2 and 3 the municipal uses. The late City might possibly have exercised between Nos. 2 and 3 a municipal discretion to the point, in distributing the proceeds of the fund, of giving this year more to No. 2 or No. 3, and the next year less, according to what the proper authorities deemed, but in subordination always to the provisions of the will, their municipal wants. It was perhaps not the case of a surplus in the exact sense of the cases just cited, for the discretion of a political body exceeds the discretion of a mere trustee; but it was certainly the case of an obligation to observe the order of succession marked out by the testator, and comes within the authorities. The City could not have ceased to appropriate the fund to No. 2, and given it all to No. 3, without violating the rule in *Chapman* v. *Brown;* for to No. 3 could go only what was left after No. 2 had been served. If No. 2 is struck out, nobody can say what No. 3 is entitled to, for it is to take only after No. 2 has been served.

The College use was No. 1, and must be first served. The residue was for the municipal uses, in succession Nos. 2 and 3. If the College use had been void, but for the provision, hereinafter more particularly noticed, that the municipal uses took this fund till the College required it, there would have been nothing for municipal uses. "When the first gift is to "a void charity, and the quantity is undefined, the bequest "of the residue fails." If the first municipal use were void, the rule applies. The residue only was devised to the second, and when the quantity for the first "is undefined the "bequest of the residue fails."

The obvious position however, and independent of the

authorities last cited, is that the consolidation of the municipalities being the defendants' own act, they cannot wield it to the destruction of one, any more than all of these municipal uses. If they could appropriate, of the income of the fund, to this or that use, a larger portion one year than another, they could not set either object forever aside, because they thought the other more worthy, or because they had destroyed it by the Consolidation Act. There the will of the testator binds and controls them.

XI. *The question of a forfeiture as provided for in the will.* The testator provides for a forfeiture to the State in the event "the said City shall knowingly and wilfully violate any of "the conditions hereinbefore and hereinafter mentioned;" and for a forfeiture by the State to the United States, should the State offend in the manner described by him. (Record, foot of page 60 and 61) What the testator calls the "conditions hereinbefore and hereinafter mentioned," are the four conditions named in Section 24, and the two named in Section 21; the two in Section 21 (Record, page 56) are that which forbids capital appropriated to the College to be used for current expenses, and that which excludes from the College ecclesiastics. Of the purposes expressed by Mr. Girard, in the course of his will, these six he designates as "conditions." He says, in Section 21, "There are, however, some "restrictions which I consider it my duty to prescribe, and to "be, amongst others, conditions on which my bequest for said "college is made and to be enjoyed, namely, first," and he "proceeds under the heads first" and "second" to state the two conditions of Section 21. He says, in Section 24, "But "if the City shall knowingly and wilfully violate any of "the conditions hereinbefore and hereinafter expressed," and he proceeds under the heads 1, 2, 3, 4, to state the four conditions of Section 24. These are the only *conditions;* the will might be violated, in any or all of the nine particulars stated in Section 21, (Record, 54–6,) as Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, immediately before stating the conditions "first" and "second," and in any particulars of any part of the will, the six designated conditions only excepted, without the devisees incurring a forfeiture. Should they, knowingly and wilfully, violate a condition they forfeit; and six cases of forfeiture are set forth; other parts of the will are left to the law, unaided by forfeiture. Not one of the testator's six conditions has been broken. Condition No.

1, in Section 24, is that "none of the moneys," &c., should be misappropriated; but the answer shows (Record, 80, 81) and the accounts appended to the answer to the 14th interrogatory of the bill, that none of the moneys applicable to municipal uses have been misappropriated, for they have not been received; the College has consumed all the income of the estate since the consolidation. The violation of no one of the six conditions seems to be made a question; and the *casus* of consolidation was not contemplated by the testator; and could not be set up as a breach of condition. The State, or the United States, does not claim as residuary legatee. The testator did not say that, *should his devises fail, from no matter what cause*, he left the rest, residue and remainder to the Commonwealth of Pennsylvania, and then to the United States of America. He said, *should his devises fail, by reason of the devisees' breach of certain conditions,* he left the remainder of said residue to the Commonwealth of Pennsylvania; and then to the United States of America. They are not to take if the City cannot take, or cannot hold; but, if the City break the six conditions, or any one of them. If the City had refused the devise, originally, in 1831, instead of twenty-three years after, by rendering its uses impossible, no claim could have been lawfully made by the State or the United States. The title of the heirs-at-law would have instantly attached, as did the title of the representatives of the donor in the *Police Jury* vs. *Reeves,* when the uses of the land given for a court-house became impossible; or, as in *Haydon* vs. *Stoughton*, when the uses of the land given for a school became impossible. The testator appointed no residuary legatee with the right to take upon the failure of his devises, or rejection of them by the devisee. He left that right, where the law placed it, in the heir, whose title is favored, and not overruled without good reason; while the claimant by forfeiture finds in his way every impediment. The difference between the title of the residuary legatee or heir-at-law, and the title of the devisee over, on condition broken, is manifest, when the disappearance of the objects of the devise, under the operation of the Consolidation Act, is attempted to be practically used as a breach of condition. For example: if there had been received, since the consolidation, moneys for municipal uses, and the appellees had misappropriated them, it would not have been a misappropriation by the devisees, the late City,

and it is *their* knowing and wilful misappropriation which is declared a cause of forfeiture. Again: how can there be a forfeiture before misappropriation, or the act, be it what it may, of forfeiture takes place? It may be probable the act will happen, but there can be no forfeiture till it does happen. True, a disability to perform the condition has been sometimes held equivalent to refusal to perform; but that has been at common law, where the condition was reserved to the feoffor or grantor, who alone could enter for breach of condition. When the estate is to go over to a third person, there may be disability to perform, without the estate going over to the third party. For example, if an estate for life were devised to A, to go over to B should A not keep it in repair, and A aliened in fee, the estate would not be forfeited to B; it would revert to the heirs of the devisor. Again: if the breach of condition were the act, not of the beneficiary, but of the trustee, (whose was the act here?) it was no forfeiture. If it were not a forfeiture in the words of the testator, "knowingly and wilfully," (was it knowing and wilful here?) it was no forfeiture. If the act were done with the consent of the party to whom the devise over is made, (here the State not only consented to the consolidation, but enacted it,) it was no forfeiture. If it were done ever so flagrantly, and no forfeiture is claimed (none is claimed here) there is no forfeiture. It is an incident of the law of conditions, that a tender of performance at the day saves the breach. What tender of performance here could there be? It is an incident of the law of conditions that a breach of a condition subsequent, may often be relieved against; what relief could there be here? The consolidation was not a breach of conditions prescribed by the testator; it was an attempt to change the tenure of the estate; to alter the trust or office delegated to the City. If the mayor, aldermen and citizens of Philadelphia, instead of getting their charter amended, had surrendered it; if, instead of disabling themselves to perform some of their municipal uses, they had disabled themselves to perform any of them, that would have been no breach of condition, as provided against by Mr. Girard. He did not provide against a revolution. It has been shown above, that the performance of the municipal uses devised to, is not the mere *condition*, but is the *body*, of the estate devised. It is not necessary to recur to that point, but the reasoning there serves the point immediately in question and that also. The late City undertook a trust which they have thrown off bodily. They do not refuse to comply with the prescribed conditions;

they do not, knowingly and wilfully, refuse to publish annual accounts; they do not, knowingly and wilfully, refuse to apply the funds to the proper objects, or to keep separate accounts, or to make their report to the Legislature annually, and submit their books and papers to the inspection of a committee; they simply refuse to perform the trust at all. If the plaintiffs show that the performance of these municipal uses is out of the question, since the Consolidation Act; that there is no such police, no such taxation, as the devised fund was appropriated to by the testator, it results that the event of performance of the uses being no longer possible, compliance with the conditions, or violation of them, is also impossible. They can neither be violated nor complied with. The claim of the United States would seem to be still more remote. Their title is to be derived from forfeiture by a party (the State) who has never had either right, title or possession to forfeit. The State has neither done, nor left undone, the acts out of which was to accrue the forfeiture to the United States. If Mr. Girard had made two residuary legatees, the State and the United States, one to take in default of the other, the United States might come in, for no other reason than because the State could not. But here they cannot come in till after the happening of certain specified events, and those events have not happened. To make a forfeiture, the *casus* contemplated by the parties must happen. A condition is regarded with the utmost degree of strictness, and cannot be forced into a service, not intended or imagined, when the condition was imposed. In *Peisch* v. *Ware*, 4 Cranch, 364–5, the Court ruled that the Act of Congress regulating the entry of merchandise, a forfeiture of which was claimed, cold not be applied to cases of wreck. In the *U. S.* vs. *Arredondo*, 6 Peters, 745–6, the lieutenant of the King of Spain had made it the condition of a grant of land in Florida that two hundred Spanish families be settled on it; a condition which was attemped to be enforced after the cession to the United States. But the Court said "that would be demanding the *summum jus*, indeed, and enforcing a forfeiture on "principles which, if not forbidden by the common law, "would be utterly inconsistent with its spirit." The supposition, moreover, always is that the sovereign power is exercised to ends which, if not beneficent, at least are not fraudulent and mischievous. *U. S.* vs. *Arredondo*, 738–9–40. To suppose that the State of Pennsylvania passed the Act of February 1854 to create a forfeiture, would be against first principles. "Conditions precedent are such as must happen

"or be performed before the estate can vest or be enlarged; "they must be strictly, literally and punctually performed. "It is a known maxim, that where the estate is to arise upon "a condition precedent, it cannot vest till that condition is "performed; and this has been so strongly adhered to, that "even where the condition has become impossible, no estate "or interest grew thereupon. Where a condition copulative "precedes an estate, the whole must be performed before the "estate can arise; or where an act is previous to any estate, "and that act consists of several particulars, every particular "must be performed before the estate can vest or take effect. "Co. Litt. 206, 218; 1 Atk. 374–6; Com. Rep. 732." Patterson, J., in *Van Horne's Lessee* vs. *Dorrance*, 2 Dallas, 317. "The intention of the party to the instrument (says "Kent, 4 Comm. 132, Ch. Estates on Condition), when clearly "ascertained, is of controlling efficacy; though conditions "and limitations are not readily to be raised by mere infer- "ence and argument. The distinctions on this subject are "extremely subtle and artificial; and the construction of a "deed, as to its operation and effect, will, after all, depend "less upon artificial rules than upon the application of good "sense and sound equity to the object and spirit of the con- "tract in the given case." Make the State and the United States residuary devisees under Mr. Girard's will, and his heirs-at-law would have no claim when, by the consolidation of the City, the trust is destroyed by the destruction of the objects of the trust. Those ends being no longer capable to be subserved by the testator's money, after the consolidation of the twenty-nine municipalities, the fund must fall into the residue. It went limited to, or in trust for, certain designated objects, the State and the United States to come in on showing a breach of any one of six conditions; but they do not come in on showing extinction, or failure, of corporate powers, which were indispensable to the performance of the corporate trust. That is not a breach of condition. It is an event which brings in the residuary devisee, or heir-at-law, and does not bring in a devisee over, on conditions which have not been violated.

XII. *The bill is not filed prematurely.* In the defendants' answer (Record, page 77), they allege that even had the plaintiffs satisfied the Court of the defendants' inability to perform the municipal uses devised to, the bill is filed prematurely; that "when the defendants refuse or decline "to execute the said trusts on the ground of their inability

"to perform their accepted duty therein, the interposition "of chancery may be invoked; but they submit that they "ought not to be deprived of this property on an imagina- "tion of difficulties that have not yet at least an existence." The opinion below (Record, page 159) seems to adopt this view. The learned judge there says, "It does not appear "that there now is or ever will be any residue to apply to "to the secondary (meaning the municipal) objects;" and on page 160, "In fine, the bill must be dismissed, because" (after assigning other reasons) "the difficulties anticipated "by the bill as to the execution of the secondary trusts are "imaginary. They have not arisen and most probably "never will." The appellants submit that a degree of mis-apprehension must have existed on this point. The bill avers the value (Record, page 3) of the estate to be thirty millions of dollars, that the surplus beyond the wants of the College goes (Record, pp. 3, 4) to the heirs-at-law; again (Record, page 30) the bill says, "of which surplus income, "together with the capital thereof, and other income, capi- "tal, estates and interests hereinafter mentioned, the said "plaintiffs, as heirs-at-law of the testator, here claim their "rateable portion;" and accordingly (Record, page 32), they state actual income to be annually $145,000 beyond "the wants of the College, and (Record, page 33) that "the "immensity of the value" of the coal lands in the counties of Schuylkill and Columbia is such that no possible increased expenses of the College could consume the annual yield of those lands, the mines being opened, if they were worked in any manner and with however little judgment, (Record, page 42.) The prayer is as follows: 1. An account to ascertain what property of the testator came to the defendants possession. 2. An account to ascertain whether of that property there is not, after supplying the College and all other bequests, an annual sum payable to the plaintiffs as heirs-at-law; and an order that such surplus be annually paid them. 3. Receiver to take possession of the estates if necessary, in order to the equitable division of income between the defendants and plaintiffs. 4. Inquiry by the master into the capacity to yield income of the coal lands, and other parts of the residue not now yielding; and should the Court be of opinion the College has a prior interest to the plaintiffs in the residue, that there be transferred to the plaintiffs whatever portion of the residue is beyond the wants of the College. And should the Court be of opinion the College has no interest in any

part of the residue, except the real estate in Philadelphia and the Schuylkill Navigation stock, that they will order to be made over to the plaintiffs, free of claim by the defendants, their rateable shares of all the residue, except the Philadelphia realty and Schuylkill Navigation stock. 5. An account of the defendants' outlay and expenditure on the estates, in order to ascertain the due rateable portions to be set off to the plaintiffs. 6. Further relief and injunction. Thus, it is seen, the bill, with due averments, seeks to recover: 1. The surplus annual income not wanted for the College. 2. The surplus lands outside of, or within the now City of Philadelphia, not wanted for the College, the same to be placed in the plaintiffs' management, or to be handed over in fee to them, as the Court on the Master's report shall decree. 3. But in any event all the lands outside of the now city of Philadelphia, and all the personal estate not otherwise disposed of by the testator, excepting the stock of the Schuylkill Navigation Company; the Philadelphia Real Estate and the Schuylkill Navigation Company's stock, and nothing else being bequeathed, besides the two millions, to the support and maintenance of the College. The answer of the defendants admits possession of all the property, but avers its value to be (Record, page 67) misstated by the plaintiffs; that the annual rent received (see their answer to the 28th Interrogatory of the plaintiff's bill) from the 567 acres of land in the city of Philadelphia, is but $6,662.50 (Record, page 99); that 17,000 (Record, page 81) and not 29,000, is the number of acres of land in Schuylkill and Columbia counties, of which but one-third is supposed to contain coal; that the coal mines have not been opened, but if they were, the defendants (Record, page 83, their answer to the 3d Interrogatory) could not say to what extent the income of the estate would be increased; "but they believe that the necessities "of the College will absorb nearly any amount of income "which the estates may produce;" that in the year 1857, (Record, page 79,) when "the largest income ever realized "from the estates was received," all the lands out of the city yielded but $64; and that their expenses were, as shown by the statement of them on that page, (Record, page 93.) The answer, therefore, admits that the College is now maintained by the dividends and interest from personalty and from rents of houses and lands in the City; that the 567 acres in the City yield less than $7000 income, and the coal lands nothing, the mines being unopened.

The answer admits all the facts necessary to a reference to the Master, which is the prayer of the bill, had the Court been with the plaintiffs upon the law; and should this Court reverse the Court below upon the law, the plaintiffs will be entitled to all they asked, or could ask, which is a decree referring the case to the Master, to ascertain and report the value of the unused residuary fund not applied to serve the College. The bill avers there exists a residuary estate unused, and not applied to serve the College; and that the heirs-at-law have succeeded to the right in it, formerly the City's. The defendants admit possession of an estate of which an enormous value is unused, and not applied to serve the College; but claim the whole of it to serve the College hereafter. They claim the whole, whether the plaintiffs succeed to the City or not, supporting their claim by the averment that the income of the fund is now only sufficient to serve the College, and hereafter may be insufficient, because, according to the terms of the will, the College expenses may be increased; and they say it will be time enough to consider your question of law when in fact there is a surplus income. Be the income large or small, if the College is limited to the Philadelphia real estate and stock in the Schuylkill Navigation Company, all the coal, lands, and other possessions go, if the law is with them, to the plaintiffs; and for the same reason the whole case must go to the Master. But suppose the College not limited to the Philadelphia real estate and the stock of the Schuylkill Navigation Company. The "remainder of said residue" was devised to the city, to be immediately applied to its municipal wants, police and others, from year to year, and to the College wants when they should arise. The evidence shows it was applied municipally for years, before the College existed. While the College was his "primary object," and was to consume the fund, should there not be enough for both objects, it was the testator's purpose that the proceeds of the whole fund, till the College was built and organized, and the proceeds of part of the fund afterwards, should be applied to municipal objects. The income of the entire capital was to ____ serve the municipal uses, as well as those of the College; with no preferences, except in point of time and certainty, of one over the other. The preference in point of time, was for the College, in point of certainty it was for the municipal uses which were not like those of the College, contingent. Such is the plain meaning

of the will, and such was the view of it pressed upon this Court, with apparent success, in the argument of the case in 2 Howard, by the counsel of the City; and soon after printed and published "by order of the Commissioners of the Girard Estates." It seems to have been argued there by the opposite counsel, that the will provided for an indefinite accumulation of the income of part or all of the "remainder of said residue." In answering this argument, the counsel for the City insist upon the perfectness of the City's right to a present interest in the fund. "The College must first take "the income to the necessary extent, *when* the contingen- "cies shall happen, and the City is to take *until* they shall "happen." Volume published "by order of the Commis- "sioners of the Girard Estate," page 21. "The application "is directed to be made by the City for *present* necessities." Id. p. 23. "The rents and profits of the real estate are not "to be invested at all." * * "The rents are to be applied "for police and taxation, without any investment, after pro- "viding for the College as hereinbefore directed." * * "The "real estate was a permanent fund in itself. Its rents and "profits were applicable immediately." Id. p. 24. * * "Such is the interpretation that has been always given to "the will by the City since the testator's death, and such is "its true interpretation." Id. * * "No part of this "income is first to go to the College before the City is to "receive any thing, but the whole goes to the City, until the "contingent demand for the College shall arise. There is "no uncertainty about what the City shall receive, for she "takes the whole income until the contingency shall happen." * * "In one contingent event, the income, so far as neces- "sary, is to go to the College, and except in that event, it is "to go to the City." Id., p. 25. But, suppose the College interest not contingent, and that the testator had not so industriously explained his purpose, that, except in point of time, the College uses had no preference over the municipal, it would be strange, if the party entitled to the final portion of the residue could not, when the defendants admit a vast capital to be unemployed, have an inquiry how much of it the defendants can keep by them unemployed and unproductive, on the plea that at some future day they may want it. It matters not whether the defendants are right or wrong, when they say the College expenses may consume every thing, and be increased without limit. The

answer to that is the testator meant otherwise; he contemplated an income and a residue beyond the College expenses, and devised that income and residue to other uses than those of the College. He bequeathed an interest to the College, and another to the municipality, out of the same fund. If all the estate were in use, and yielding income, what the defendants say might or might not be good against the title of the plaintiffs to go to the Master, the proofs not warranting an impeachment of the defendants' management. If the defendants showed the income to be $100,000, and that it could be made no more, it might matter not whether the point of law is for the plaintiffs or against them; it could yield no fruit. But when they show that the College is supported, and a vast estate left untouched, the coal mines not opened, and five hundred and sixty-seven acres in the City yielding a rent of not $7,000, the plaintiffs, the point of law being with them, are entitled to go to the Master. The question before the Master would be how much was used for the College; the unused would be for municipal uses, or the party representing them, the heirs at law. This *quantum* was a question to which the plaintiffs needed to call no proofs, when the case was before the Examiner and not before the Master. The time had not come. Had the plaintiffs called witnesses to swear that the coal lands, if the mines were worked, would make the income a thousand times larger than it is to-day, they would not have advanced their case an inch. They would have been as much, but not more, entitled to a reference to the Master than they were, when the defendants' answer came in, admitting unemployed capital. If there be a fund unemployed, and the plaintiffs are entitled to whatever is not employed, nothing can stand in the way of an inquiry. If the defendants admit unemployed income, the plaintiffs would have a decree, and so if the defendants admit unemployed capital. In either case the Court would refer it to the Master, to inquire *how much*, and in neither could the conclusion be arrived at by means of proofs before the Examiner. No proofs would have served the appellants, nor would the Court have listened to, or considered them until they had the Master's report; and it will hardly be contended that the plaintiffs could have obtained a reference to the Master before satisfying the Court, at the hearing on bill, answer, and proofs, upon the point of law. If the question of law is with the plaintiffs, they were entitled to

a decree referring to the Master, to inquire what estates ought to be set aside to them. Would the appellees have the plaintiffs below move a reference to the Master, before a decree, or before the hearing? Upon what showing, and at what stage of the cause prior to the hearing, would such an application have been listened to? The bill prayed a reference to the Master to enable the Court to make a final decree, should they rule the point of law in the plaintiffs' favor; and it prayed nothing that was not ancillary merely to such a reference, unless the Court should be with the plaintiffs on the question of the College being limited to the Philadelphia realty and the Schuylkill Navigation Company's stock, in which event, so far as regards the coal lands, the interference of the Master might be unnecessary. Had the Court ruled the main question of law with the plaintiffs, there would have been an interlocutory decree for them; and their next step would have been a motion to send the case to the Master. As the Court ruled the other way, the time never came for such a motion. Let it be supposed the testator had confided the College trust to his executors, or that the Court had removed the City from it, as, at any time, they might, and appointed another trustee, will it be doubted that if the City, representing the uses for police and improvements, were the plaintiffs in this bill, they might have a reference to the Master to ascertain whether there was not enough for the College and the municipal uses too? Would the City be told, True, you are to have whatever is not needed for the College, but you have no right to inquire whether there is capital sufficient for both? Can the case be imagined where, one having a joint interest with another, no matter if to be served dollar for dollar, or not till after the other has been served and satisfied, is not entitled to an account? The appellees say the plaintiffs must wait, but they have not said till when; and it would be difficult. If the plaintiffs have succeeded to the place occupied by the late City they have a vested interest in this "remainder of said residue" of the testator's estate, which authorizes them to call for an account, no matter what the probabilities or improbabilities of its showing a balance due them; as well might the partner in a commercial house, who asked an account, be told it would be unavailing. His right to all he asks is perfect when he shows a partnership. He need go no further. If the testator here gave the City an interest in this fund, and the plaintiffs now possess it, the most improbable of all events

may be that the College will not need the whole of it, and the prudent view of the duty of the College trustees may be to lay up the accumulations of the fund from year to year; the answer is, the testator did not mean they should.

XIII. *The testator does not devote to the College, in any event, the whole remainder of said residue.* (See clause 21st of the will; Record p. 57.)

The City is confined to the real estate in Philadelphia and the stock in the Schuylkill Navigation Company for the maintenance of the College. They cannot draw for that object upon the whole residuary estate. Mr. Girard devotes to build and maintain the College two millions of dollars, the City "to apply and expend so much of that sum as may be "necessary" in erecting the College building of dimensions at least one hundred and ten feet by one hundred and sixty, "with suitable outbuildings," to "be constructed with the "most durable materials and in the most permanent manner, "avoiding needless ornament, and attending chiefly to the "strength, convenience and neatness of the whole." When constructed and "supplied with plain and suitable furniture "and books, philosophical and experimental instruments and "apparatus, and all other matters needful to carry my gen- "eral design into execution, the income, issues and profits of "so much of the said sum of two millions of dollars as shall "remain unexpended shall be applied to maintain the said "College according to my directions." The will then proceeds to prescribe the mode of building the College, and to give directions for conducting it when built; and the 21st clause ends in these words: "If the income, arising from "that part of the said sum of two millions of dollars, remain- "ing after the construction and furnishing of the College "and outbuildings, shall, owing to the increase of the num- "ber of orphans applying for admission, or other cause, be "inadequate to the construction of new buildings, or "the maintenance and education of as many orphans as "may apply for admission, then such further sum as may "be necessary for the construction of new buildings and "the maintenance and education of such further number of "orphans as can be maintained and instructed within such "buildings as the said square of ground shall be adequate to, "shall be taken from the final residuary fund, hereinafter "expressly referred to, for the purpose, comprehending the "income of my real estate in the city and county of Phila-

"delphia, and the dividends of my stock in the Schuylkill "Navigation Company. My design and desire being that "the benefits of said institution shall be extended to as great "a number of orphans as the limits of the said square and "buildings therein can accommodate." On the question, Did the testator intend the College to be maintained, if more than the two millions were needed for it, from his whole residuary estate, or only from that part consisting of the Philadelphia realty and Schuylkill Navigation Company's stock? the first observation is, that the language quoted from the 21st clause, on the intepretation of which immediately depends the solution of the question, must be singularly incorrect, if it be the "final residuary fund" which is described as "comprehending" the Philadelphia realty and Schuylkill Navigation Company stock. It comprehends in real estate, beside the Philadelphia realty, the testator's great possessions in Columbia and Schuylkill counties, and in personalty, beside the Schuylkill Navigation Company stock, eleven other items of personal property, enumerated by the defendants in their answer (Record, p. 78). To make the testator say that the residuary fund comprehended two items, when it comprehended twelve, one of them of incalculable value, and about six millions of personalty beside, would be to make him strangely inaccurate. What the testator meant, and what he said, was, that the "further sum," which might, if needed, be taken from the residuary fund, comprehended the Philadelphia realty and Schuylkill Navigation Company stock. It was not the *residuary fund*, but the *further sum* which might be taken, that comprehended the Philadelphia realty and Schuylkill Navigation Company stock. He added to the two millions, with which it was his expectation the College would be built, and afterwards maintained (such, also, was the expectation of the City—the interest on two millions, being sufficient to build the College and leave the principal intact), a further sum, if needed; and that further sum he said comprehended his Philadelphia realty and Schuylkill Navigation Company stock. The nominative to "comprehending" is "further sum," and not "residuary fund." Either would make grammar; but only the former can make sense. Be it observed, too, that, if the defendants succeed in limiting the residuary fund to the Philadelphia realty and Schuylkill Navigation Company stock, they succeed in establishing a doubt whether Mr. Girard did not die intestate as

to all his lands in Schuylkill and Columbia counties, and eleven of the twelve items of personalty in the answer enumerated by them. In that event, the questions before the Court would call for no determination, the estates claimed by the plaintiffs going to them under an intestacy. If, after his specific bequests and legacies, Mr. Girard only bequeaths a residue comprehending the Philadelphia realty and the Schuylkill Navigation Company stock, did he not leave unbequeathed a great portion of his property? If the words "final residuary fund" comprehend nothing but the Philadelphia realty and Schuylkill Navigation Company stock in the concluding lines of the 21st section of the will, the words "residue and remainder" in the beginning of the 20th clause, and the words "remainder of said residue" in the beginning of the 24th, seem to comprehend no more.

The 21st clause is given to the provision for the College. It has of the residue, after certain legacies are paid, two millions of dollars; and should they be insufficient, the income of the Philadelphia lands and Schuylkill Navigation Company stock. The 22d clause is given to a legacy of five hundred thousand dollars for local municipal objects. The 23d clause is given to a legacy of three hundred thousand dollars to the State of Pennsylvania, which they receive on specified conditions. Then comes the 24th clause and disposes of "the remainder of said residue," under three heads: 1st, to the College, as "directed in the "last paragraph of the 21st clause," where it is directed that, if the two millions are exhausted, the College take a further sum comprehending the income of the Philadelphia realty and Schuylkill Navigation Company stock; 2d, to the police of the City; 3d, to the improvement of the City property and its general appearance, and to diminish the burden of its taxation. It was insisted below by the defendants that the College is called the testator's "primary "object." So it is; but he used no loose language; what he says, is, "after providing for the College, *as hereinbefore "directed*, as my primary object;" and the direction was the Philadelphia realty and Schuylkill Navigation Company stock, and no more. The College was his primary object, and was to be supplied first; but the testator twice recurs to his directions, already given in clause 21, as limiting the College,—limiting it "as hereinbefore directed," and limiting it "as directed in the last paragraph of the 21st clause." No language is found in the 24th clause, or in any part of

the will, to the effect that the municipal objects were devised to, contingently only; that they took nothing, should the College authorities consume the whole fund. The designation of the College as the testator's "primary object" is essential to convey justly the testator's meaning. There was a portion of the remainder of said residue on which the College might draw to the exclusion of all the municipal purposes; therefore the College was the primary object. But if the testator meant the whole for the College, in any possible event, not only his language is defective in common fulness and clearness, but, in a will, bearing everywhere marks of a skilful professional hand, there is a total omission of apt terms to convey such a meaning. No professional man relied on the words, "primary object," to signify that the College might take the whole fund. Even a testator, *inops consilii*, could hardly have done that. There are reasons found in various parts of the will for thinking the view correct which limits the College to the Philadelphia realty and Schuylkill Navigation Company's stock: 1. The provision for a forfeiture. When the testator comes in the twenty-fourth clause to declare a forfeiture, should the devisees violate the conditions of his bequest, his Record p 60 language is this: "But if the said city shall knowingly and "wilfully violate any of the conditions hereinbefore and "hereinafter mentioned, then I give and bequeath the said "remainder and accumulations to the Commonwealth of "Pennsylvania, for the purpose of internal navigation; ex-"cepting, however, the rents, issues and profits of my real "estate in the city and county of Philadelphia, which shall "forever be reserved and applied to maintain the aforesaid "College in the manner specified in the last paragraph of "the 21st clause of this will." And if the Commonwealth of Pennsylvania should incur a forfeiture, then to the United States of America, "the rents aforesaid always ex-"cepted and reserved for the College as aforesaid." Here are two more repetitions of what had been before several times said, that the College, in real property, subsidiary to the two millions, had but the Philadelphia realty ——, the Schuylkill Navigation Company stock disappearing altogether in the forfeiture clause. The testator could not say, in providing for a forfeiture, which might take place centuries after his death, that his shares in a company should or should not be forfeited. It would have been absurd, and would have given an air of the ridiculous to his menace. But if all the land

comprised in the "remainder of said residue" was bequeathed to the College, why does the testator say, in the forfeiture clause, it was only "real estate in the city and county of "Philadelphia?" He puts his construction on the 21st clause; he says it is not all the remainder of said residue which goes to the College. He says it is the Philadelphia realty only that is to be "reserved and applied to main- "tain the aforesaid College in the manner specified in the "last paragraph of the 21st clause of this my will." 2. The great value of the Philadelphia real estate. It appears by the defendants' answer (Record, page 82) to the 7th Interrogatory of the bill, that they hold in the City of Philadelphia 152 dwelling-houses and store-houses, the Girard College and its grounds, three vacant lots of land, two wharves, and 567 acres of land in that part of the City which was formerly the township of Passyunk and the district of Moyamensing. It is incredible that if the College were added to from time to time never so much, the real estate of Mr. Girard in the City of Philadelphia, in its progressive value, would not more than meet its wants. 3. The wants of the College, so far as concerns this question, are to be measured to the lot on Chestnut street, where it was originally directed to be built. When the testator used the language, the meaning of which is in question, he spoke of a college on his Chestnut street lot, and had not purchased the forty-five acres called Peel Hall, on which he afterwards by codicil ordered it built. The Chestnut street lot was a square of about 400 feet of ground. It must be remarked too that the structures ordered to be erected on the forty-five acres are the same as those ordered for the square of ground on Chestnut street; a main building 110 feet by 160, with suitable outbuildings to accommodate at least 300 pupils. The codicil does not enlarge the College, it does no more than change the site. 4. The calculation of the testator, and it was a reasonable one, was, that the two millions would build, and support, the College. In bestowing on it the additional fund to the two millions, he begins thus: "If the income arising from that part of the "said sum of two millions of dollars remaining after the con- "struction and furnishing of the College and outbuildings "shall, *owing to the increased number of orphans applying* "*for admission, or other causes, be inadequate to the construc-* "*tion of new buildings* or the maintenance or education of as "many orphans as may apply for admission, then such fur-

"ther sum," &c. In the same clause, the 21st, he had before said, after describing his mode of management of the College, "the income issues and profits of so much of the said sum of "two million dollars as shall remain unexpended shall be "applied to maintain the said College according to my direc- "tions." That his estimate was just, though it did not correspond with the event, appears from the facts stated by the defendants in their answer. According to the accounts appended (Record, pp. 89, 90) to their answer to the 14th Interrogatory of the bill, the College must have been finished and opened in 1848, when first a charge is made for conducting it of $37,821.83, which gives a term of sixteen years from the testator's death in 1831 for the progress of building. The interest of two million dollars for sixteen years would have built the College, as Mr. Girard seems to have anticipated. The total expense of the building is stated by the defendants in their answer to the 16th Interrogatory to have been $1,935,737.46 (Record, p. 94). By the same accounts appended to the defendant's answer to the 14th Interrogatory, and by the answer to the 25th Interrogatory, the expenses for the year 1859, (Record, pp. 94 and 98,) the year when, since the College was opened in 1848, they were the highest, was $96,907.02, a sum which includes items amounting to upwards of $12,000 for additional buildings, and providing for additional pupils, there being then 330 pupils (Record, p. 80) in the enjoyment of the benefits of the institution. The testator's view as regards the number of pupils to be provided for is seen near the beginning of clause 21 of his will: "A permanent college with suitable outbuildings "sufficiently spacious for the residence and accommodation "of at least three hundred scholars."

XIV. *Is a bequest to a City for municipal purposes a charitable gift?*

The appellants have assumed it to be; but it is well to ask the attention of the Court to the fact that in governing charities motives prevail in England which can have no place here. This Court has ruled that the present law of charities preceded the Statute of 43 Elizabeth; but it has always been taken for a general rule as laid down in *Morice* v. *The Bishop of Durham*, (9 Vesey, 405,) that the statute is the immediate test. The question, in this case, is not whether a gift not on the list may be a charity, but, whether it can be a charity when it is expressly excluded. The second and third sections are as follows:

"*Provided always*, That neither this act nor any thing

"therein contained, shall in anywise extend to any lands, "tenements, rents, annuities, profits, goods, chattels, money "or stocks of money, given, limited, appointed or assigned, or "which shall be given, limited, appointed or assigned, to any "college, hall or house of learning within the Universities of "Oxford or Cambridge, or to the Colleges of Westminster, "Eton, or Winchester, or any of them, or to any Cathedral "or Collegiate Church within this Realm."

"*And provided also,* That neither this act, nor any "thing therein, shall extend to any city, to town corporate, "or to any the lands or tenements given to the uses afore-"said within any such city or town corporate, where there is "a special governor or governors appointed to govern or di-"rect such lands, tenements, or things disposed to any the "uses aforesaid, neither to any College, Hospital or Free-"school which have special visitors or governors or overseers "appointed them by their founders."

Towns corporate seem to have been excluded because they were thought already protected. They were provided with protection in municipal authority. Is it the reason why they were taken, by construction, from the list of exceptions that they lost their municipal protection?

But the towns corporate of America are, and always have been, capable of self-protection, being gifted with powers and authorities unknown in England. Municipal powers, such as are universal in America, never were given to English towns, either under their old system of close corporations or under the present system, as existing since the municipal reform of 1836. The power to lay taxes, which the Crown could not give, to borrow money, and other important and, as we regard them, essential municipal functions, did not, and do not exist in English towns, or, if at all, to a very qualified extent. Commissioners, committees, trustees under Acts of Parliament, or the Quarter Sessions took for many municipal purposes the place of the municipal body. But their united authority has always been very small.

English charity, until half a century before the time of Elizabeth, was dispensed by the church, which gave alms, entertained the great, supported decayed gentry and let their lands at an easy rent. But religious houses and establishments were subjects of jealousy, owing to their being, as was alleged, under foreign influence, and to their prodigious accumulation of the wealth of the country, which consisted, in those days, almost exclusively, of landed possessions. The statutes known as the statutes of mortmain, enacted

under Henry 3, Edw. 1, Richard 2, Henry 8, and other hindrances of earlier date, were resorted to by the lay aristocracy to prevent their estates passing to their ecclesiastical brethren. The Reformation found the church owner of vast amounts of property, which were taken from them and distributed among the nobles and gentry of the kingdom. The money of the poor was given to the rich. By this sudden revolution the sources of charity were dried up, and to supply their place recourse was first had to the statutes passed under Henry 8 and Elizabeth, by which mendicancy was made felony, and subjected to a scale of barbarous punishments, beginning with branding and ending in death by hanging. These enactments failing to cure the disease, the Statute of 43 Elizabeth was next resorted to, putting charity in the care of commissioners. The object was, after the destruction of the church and the absorption of its property by the upper classes, to save the remnant of what had been devoted to charitable offices; and the wind and the rain having failed, as in the fable, to do the work, they tried a ray of sunshine. The title of the act, "An Act to redress the "misemployment of lands, goods and stocks of money, here-"tofore given to certain charitable uses," was well bestowed, for, the religious houses being gone, there were none left to prevent the poor being a burden to the rich, and Parliament must needs have been, for their own sakes, most anxious to redress the misemployment of what little remained of charitable gifts. In legislating for the poor they legislated for themselves. The seventh section carefully provided against the Commissioners under the act interfering with the possessions of the great, or disturbing in any way the acquisitions of those to whom had been transferred the means from which the poor of the kingdom had been so long supported.

"*Provided always*," says the seventh section, "that this "act shall not extend to give power or authority to any "commissioners before mentioned, to make any orders, judg-"ments, or decrees, for or concerning any manors, lands, "tenements, or other hereditaments aforesaid, conveyed, "granted, or come unto the Queen's Majesty, to the late "King Henry the Eighth, King Edward the Sixth, or Queen "Mary, by Act of Parliament, surrender, exchange, relinquish-"ment, escheat, attainder, conveyance, or otherwise." The anxiety of Parliament to provide for the wants of the needy went further. Gifts in mortmain ceased to be subject to discouragements. The statutes of 7 Jac. 1, ch. 3, of 13 and 14

Car., ch. 2, of 17 Car. 2, ch. 3, sec. 7, of 29 Car. 2, ch. 8, of 7 and 8 W., 3 ch. 37, of 2 and 3 Ann, ch. 11, of 5 Ann, ch. 24, of 6 Ann, ch. 26, of 1 Geo. 1 St. 2 ch. 10, and of 9 Geo. 1, ch. 7, removed from alienations in mortmain many of their obstacles. It was not till the year 1736 there was a change of tide, when the act passed of 9 Geo. 2, ch. 36, rendering invalid bequests of land in charity, unless to the two universities, or the great schools of Westminster, Eton, or Winchester, ~~by wills made more than twelve months before the death of the testator.~~ The Crown, by the exercise of the dispensing power, had been accustomed to license corporations to take and hold lands; and when, in 1688, the dispensing power disappeared, there was passed, soon after, an act duly empowering the Crown to grant these licenses. Charity had taken a direction which enabled the aristocracy to encourage it. Charitable gifts naturally seek to serve them a permanent hand, and they were made largely to municipalities, and to ecclesiastical bodies. The higher classes of laity were supreme in the new church. For its more lucrative places, the beneficiaries are, many of them, supplied by the great families; and the smaller benefices are either bestowed by them directly, or filled by their influence. Down to the year 1815, when the number of clerical sinecures was slightly reduced, about one-half of the ten thousand clergymen of the Church of England were non-residents. Gifts to the church, whether for its own benefit or the benefit of others, were gifts to those who ruled the church, filled its places, and dispensed its bounties. As regards gifts to municipalities, public reports and proceedings in Parliament, prior to the municipal reform of 1836, have given to facts, always notorious, official authenticity. See "The first report of the commissioners appointed to inquire into the "municipal corporations in England and Wales, ordered by "the House of Commons to be printed, 30th March, 1835." English municipalities existed only to subserve political influence, and towns ended where they had begun, centuries before, with a great man for their protector. Including places of large population, the corporations of towns were the hereditary possessions of prominent individuals, and were treated by them like any other species of property, bought, sold, settled in marriage on children, and advertised for sale in the newspapers. The freemen, or voters, bore no proportion to the population. Towns did not watch, light, and pave, or dispense their charities; that was done by the

gentlemen whom they returned to Parliament, who spent the funds and gave the town, in return, such support and means of charity as might be agreed to be necessary. When, under Charles II. and James II., the Crown seized upon the charters of towns, the object was to secure so many members of the House of Commons. Large portions of the territory of considerable places belonged in fee simple to the patron of the borough. In the town of Ipswich, the same report says there were one hundred and one taverns, of which forty-seven were the property of the patron. Corporation places, which were all places for life, cost considerable sums. In 8 Beavan, 78, *The Attorney-General* v. *The Corporation of Poole*, may be seen the case of a person who held twelve life-places in the town of Poole, in Dorsetshire, and received £4,500, the estimated damage he suffered in being removed from them, under the Reform Act. No accounts were kept of public money in some cases, and in others it was all mortgaged to the member who sat for the place. Occasionally the surplus was divided among the corporators. So much at the disposal of the corporation was considered municipal property, that the great town of Liverpool was assessed and taxed, and paid its annual dues to the government, as if its possessions had been those of a private individual. "The corporations," said the same report, "frequently possess patronage, both ecclesiastical and lay. "They present to livings, appoint lecturers, masters of schools "and hospitals, and have the power of selecting the objects "of various charities." "But," says the same paper, "The importance which the privilege of electing members "of Parliament has conferred upon corporate towns, or "rather upon the governing bodies there, and the rewards for "political services, which are brought within the reach of "the ruling corporators, have caused this function to be con- "sidered in many places as the sole object of their institu- "tion. In some boroughs this right has survived all other "traces of municipal authority. The custom of keeping "the number of corporators as low as possible may be re- "ferred to this cause, rather than the desire of monopolizing "the municipal authority, which has been coveted only as "the means of securing the other and more highly prized "privilege. Hence, a great number of corporations have "been preserved solely as political engines, and the towns "to which they belong derive no benefit, but often much "injury, from their existence. To maintain the political

"ascendency of a party, or the political influence of a "family, has been the one end and object for which the "powers intrusted to a numerous class of these bodies have "been exercised. This object has been systematically pur- "sued in the admission of freemen, resident or non-resident; "in the selection of municipal functionaries for the council "and the magistracy; in the appointment of subordinate "officers and the local police; in the administration of chari- "ties intrusted to the municipal authorities; in the expendi- "ture of the corporate revenues, and in the management of "the corporate property. The most flagrant abuses have "arisen from this perversion of municipal privileges to "political objects." Charity was a political question in England at the date of the Statute of 43 Elizabeth, and so has been to the present day. Nothing could be more natural than that all questions should bend to the ruling policy of the country; but, is that policy to rule, and the laws and usages, which grow up under it, to be transplanted to other countries with totally different habits and exactly opposite institutions?

In Baxter's well-known Case, 1 Vernon, 248: "Robert "Mayot, who was a beneficed clergyman of the Church of "England, by his last will, 12th October, 1676, bequeathed "£600 to Mr. Baxter, to be distributed by him among sixty "pious ejected ministers, and adds, I would not have my "charity misunderstood. I do not give it them for the sake "of their non-conformity, but because I know many of them "to be pious and good men, and in great want;" but the charity was declared void, the Chancellor decreeing it by *Cy près* to "the maintenance of a chaplain for Chelsea "College." At pages 47, 48, of the commissioners' report already quoted, will be found the following language: "The "corporation of Exeter is indebted to various charities a "sum exceeding £17,000. At Truro, the charity property "has been let for a fine and a nominal rent. This nominal "rent has been applied to the charity, and the fine has been "appropriated to the purposes of the corporation. At "Cambridge no accounts have been kept; but the misappro- "priation of these funds is not denied by the corporation. "At Ipswich, malversations have long been matters of com- "plaint. In 1811, a petition upon this subject was presented "to the Lord Chancellor by a member of the council. It "was sent back for the insertion of certain entries from the "corporation books; but these books were in the possession

"of a member of the self-elected assembly, and were not "forthcoming. Other members of the council were dissatis- "fied with this interference of their colleague, and the town- "clerk remonstrated with him, urging that, if he persevered, "the funds would be taken out of the hands of the corpora- "tion. The petition was consequently abandoned; and from "that time to the present the same waste of the property "has been going on." But while petitions against corporate abuses of charitable gifts were abandoned, and waste had its way, towns and boroughs were constantly before the Courts, on questions touching the right to the meanest corporation places; and they had the most attentive hearing. In 8 Modern, 201, *The King* vs. *The Corporation of Brecknock*, "A quo warranto against Jones and Powel for pretending to "be burgesses of Brecknock, in Wales, was referred to all "the judges of England." The books literally abound with cases of mandamus and quo warranto, apparently the most insignificant, turning on the most disreputable quibbles, and sometimes involving the strangest incongruities; the Mayor, in one case, being ousted because he had not taken the sacrament; but they concerned deeply the patron of the borough, whose interest could be maintained only by having corporation officers of his own way of thinking. While no case can be found where equity actually refused its aid to redress the misemployment by a municipality of a gift to charitable uses, yet it is equally true, that few cases appear in which redress was sought for the notorious and flagrant abuses of such funds perpetually indulged in. These abuses were for the benefit of the patron from whom charity could take no appeal. It was vain to struggle against power and wealth. What did Lord Eldon mean in *The Attorney-General* vs. *Caermarthen*, decided in 1805? The report in Cooper's Chancery Cases, 30, is as follows: "This was an "information stating that the corporation was seized of real "estate for purposes of public utility; and of other real "estate in trust for private charity; and that the defendants "had sold part of the first-mentioned estates, and were selling "the remainder, and charging a general misapplication of the "funds and abuses of the charity; and praying an injunction "to restrain the first and the Court's regulation of the latter. "The defendants demurred for multifariousness. *Lord Chan-* "*cellor*. The two things don't hang properly together. Even "with regard to the misapplication of the corporation's own "money I think this Court cannot interfere. I know Mr.

"Justice Buller thought that this Court had jurisdiction in a "case of a corporation's misapplying its funds; but we have "never been told how it is to proceed. The best thing I can "do is to allow this demurrer, not giving leave to amend."

"The principle of law," said Sir Robert Peel, who opposed in the House of Commons the municipal reform bill, "heretofore has been, that these corporate bodies have had "a legal right to apply their funds to other than municipal "purposes; they clearly have a right to apply their funds "to corporate purposes as distinguished from municipal; and "I apprehend that it has been ruled by the highest authori- "ties that, excepting so far as the restraining statutes inter- "fered with the powers of ecclesiastical corporations, the "corporations of this country had a right to regulate, at their "discretion, the application of their property, and even to "alienate it, if they thought proper." Debate on the Municipal Corporation Bill, 28 Hansard, 3d series, 560. Mr. Scarlett, afterwards Lord Abinger, who also opposed the bill, said in the same debate, "It was not his opinion that exist- "ing abuses would be much lessened by this bill, which trans- "ferred power from an independent to a popular body, that "had every motive to distribute their patronage for political "purposes. It must be recollected that, although the bur- "gesses themselves might not be in a condition to benefit "from the mal-administration of these trusts, every burgess "had many relations, some of whom might be in such a con- "dition. If the Town Council, a popular body, had the "whole administration of these charities, it was certain, if "any reliance could be placed on experience, that they would "be appropriated entirely to political purposes." 29 Hansard, 3d series, 244. It is true it never was decided that the owner of a borough could spend with impunity its charity funds, to his political and personal ends, and settle with the poor afterwards; but practically the doors of justice were closed to all redress. The judiciary were supporters of the system. It may have been a good system; and need not be impugned so long as it is left to those who flourished under it. After parliamentary reform, and the opening of the boroughs in 1832, towns corporate had no longer their political importance, and the municipal reform of 1836 naturally followed. All town charters, except in London, were changed, their municipal authority was defined, and towns were required to exercise it; but it was left, as it had been, small and insignificant, and municipal funds of whatever kind were brought

under the direct control of chancery. Why should, in America, a devise to a municipal corporation of a fund out of which to improve their police and improve the City property and the general appearance of the City itself, and in effect to diminish the burden of taxation, be regarded as a devise to charitable uses? Why regard it as a charity, when it does not come within the statute? Can it be necessary to follow the English authorities, by which such devises have been affected to be treated in the Courts as if they were not, as they are, in direct and positive terms, excluded from the statute? Why follow their law of charity when applied to prop establishments, not, like charity, universal, but local and peculiar, and, if not peculiar to themselves alone, at least unknown to us?

XV. The appellants would suggest in conclusion, that the municipal objects provided for by the testator being a more "competent police," "to improve the City property and the "general appearance of the City itself, and in effect to diminish "the burden of taxation," (Record, page 60,) the consolidation of the City with its suburbs is *a specific* against the accomplishment of those purposes. The object of Mr. Girard was to give finish to municipal work, at the date of his will, far advanced; to improve, finish and adorn an already well-appointed municipality. This appears in all parts of the will to which the subject is appropriate. His idea was to establish a good police and improve the City property and the general appearance of the City, already creditable, at the same time diminishing the burden of taxes paid by the citizen. These objects were within reach when the City plot was less than two square miles and filled up with population. There was to be no levelling and draining of swamps and hills. The City was built, and Mr. Girard proposed to add to its comfort and ornament. It was not the work of preparing the ground for the habitation of man which he left his money to. The suburbs were to take care of themselves. But the very object of those who brought about consolidation was to make the City take care of them. These suburbs being by the Consolidation Act made part of the City, it is not only, as above shown, that the testator's legacy must, by arithmetical necessity, be applied to them as an integral part of it, but the whole spirit of the municipal uses, which was improvement, finish, a better appearance, accompanied by lighter taxes, is defeated, and gives way before suburban need of the rough and ex-

pensive work of laying the foundations for accommodating the population which from year to year collects itself round the old City on its northern, southern and western fronts; the eastern being covered by the river Delaware. Mr. Girard's legacy was used in pursuance of the terms of the will, when it was applied to a city of two square miles, its entire area covered with buildings, and which had only to supply itself with elegance and comfort under a moderate taxation; but it is directly misapplied, and the terms of the will are grossly abused, when the money is devoted to the labor of getting ready the surface of the ground for houses and highways, and paying the debts which are incurred by such work. The City to which the testator bequeathed his money had no suburbs and by its charter could have none, and was ripe for the kind of improvement he contemplated. The present City has a suburb which is unlimited—time will never be done taking it into the inhabited part of the plot; and the money of Mr. Girard must go to pay for it. The fund goes to the primal work of the spade. The City had no debt at the date of Mr. Girard's will; the debt is now more than $40,000,000, an increase of liabilities which was foretold by the fall of City securities that accompanied the consolidation with the suburbs; the securities of the suburban municipalities all at the same time rising in the market. At the period of the consolidation, according to the figures (Record, p. 110) of those who urged the measure, and whose policy it was to represent the debts of the City as large and their possessions small, the possessions of the City much exceeded their debt. The plain truth was, they had no debt; on the contrary were rich and unincumbered. According to the figures of the same parties (Record, pp. 111–112), whose policy it was to represent the suburban debts as small and their possessions large, the case was the converse, and the plain truth was, they were, most of them, deeply in debt, with little means but taxation of meeting their dues. The rate of City taxation for the year 1854, the year of the consolidation, was one hundred and fifty cents on the one hundred dollars of assessed value of the property of the citizen. The rate of City taxation for the year 1866 was four hundred cents on the one hundred dollars of an enhanced assessed value of the property of the citizen. It is literally true, *first*, that the amount contributed by Mr. Girard to the improvement of a city of two miles square is insignificant when it comes to be applied to an area

of an hundred and thirty square miles, each dollar of his legacy being reduced to much less than a penny, to the destruction of what is called, in one of the English cases, by the Chancellor, the *pillars of vanity;* and *second*, that the purpose and policy of Mr. Girard, which was improvement in the sense of superior comfort and a degree of municipal ornament, is indefinitely postponed. It is true of this as of all parts of the case that the effort of the defendants is to maintain themselves in a position in plain and palpable violation of the objects of the testator and of all principles governing the construction of men's wills. If Mr. Girard could have chosen between the defendants' bold defiance of his clearly-expressed purposes and letting this part of his estate descend to the heirs-at-law, he need not have hesitated. Every respect is due to the legislative right which has been exercised of modifying a municipal charter to the wants and even caprices of the citizen, but the Legislature cannot modify, still less cancel, a man's last will and testament, any more than his contracts. Mr. Girard meant the old City, not the new, and the Supreme Court of Pennsylvania have said so in *Soohan's* case. There the uses intended for the benefit of the old City are capable of easy performance since consolidation; here they are incapable of any performance. If they could be performed it must be with an uncertainty, reducing performance to no performance at all, and the question for the Court is, whether the defendants shall retain their hold on this fund on pretences transparently insufficient in *fact*, and having no *legal* virtue but what they derive from a municipal charter, which cannot destroy and was not meant to destroy, private right.

C. INGERSOLL,
For the Appellants.

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STATEMENT OF THE CASE.

Mr. Stephen Girard, a citizen of Pennsylvania, died in the City of Philadelphia in the year 1831.

His will was duly admitted to Probate by the Register of Wills for the City and County of Philadelphia.

Immediately upon his death, the defendants, as his residuary devisees, entered into possession of his real estate, and that possession has continued till the present, except as to certain lands in Louisiana, which were claimed and recovered by the Government of the United States, and land in the City of Philadelphia and in Schuylkill county, in the State of Pennsylvania, which were recovered by Mr. Girard's heirs upon the ground that they were purchased after the date of the will.

Mr. Girard's Executors, from time to time, and within a few years after his decease, paid and delivered to the defendants, as residuary legatees, large amounts of personal property.

The income from the real estate, and the personal property, or its income, have been applied, by the defendants, to the trusts of the will.

By his will the testator bequeathed to charitable institutions and charitable objects, and to friends and servants, the sum of about one hundred and seventy thousand dollars.

To his heirs and next of kin he distributed one hundred and forty thousand dollars in money, and his real estate in France.

In the XXth paragraph of his will he declares that he had been for a long time impressed with the importance of educating

the poor in such wise, that by the early cultivation of their minds and development of their moral principles, they might be placed above the temptations to which, by their ignorance and poverty, they were exposed; and that he had sincerely at heart the welfare of the City of Philadelphia, and was desirous to improve the neighborhood of the river Delaware, so as the health of its citizens might be promoted; and that with a view to the first named object, to the extent of his power, he was desirous to provide for such a number of poor male white orphan children as could be educated and maintained in one institution.

He therefore devised to the defendants (then known by the corporate name of the Mayor, Aldermen and Citizens of Philadelphia) and their successors, all the residue and remainder of his real and personal estate, in trust,

1. As to two millions of dollars to build and furnish a College; and if the income arising from that part of the two millions, remaining after the constructing and furnishing the College and out-buildings, should be insufficient to maintain the applicants for admission, or to construct new buildings, then such further sum as may be necessary for these purposes.

2. As to five hundred thousand dollars to improve the eastern front of the City, and to remove all wooden buildings from the City limits.

3. A bequest to the Commonwealth of Pennsylvania of three hundred thousand dollars.

Any remainder, after providing for the above objects, the testator directed should be invested so as to form a permanent fund, and the income applied:

1. To the further improvement and maintenance of the College.

2. To enable the Corporation to improve its police.

3. To enable the Corporation to improve the City property and the general appearance of the City, and in effect, to diminish the burden of taxation.

"To which objects," in the language of the testator, "the prosperity of the City, and the health and comfort of its inhabitants, I devote the said fund as aforesaid, and direct the income thereof to be applied yearly, and every year forever, *after providing for the College as hereinbefore directed, as my primary object.*"

The bequest of three hundred thousand dollars to the Commonwealth of Pennsylvania was duly paid; and the sum of five hundred thousand dollars for the improvement of the Eastern front of the City, was invested, and remains intact.

The College buildings were commenced in the year 1833 and finished in 1847. For a time, the income alone of the two millions was applied for their construction, but from time to time, as the necessity of the speedy prosecution of the work required more than the annual income would supply, parts of the capital were sold. The failure of some of the Corporations, in whose loan or stock the capital was invested, to pay dividends, made this imperative.

When the College buildings were finished, the whole of the two millions had been absorbed. The residuary fund was then resorted to, to maintain the College, and from that time to the present, the whole net income of the estate, both real and personal, has been applied to that purpose.

The applications for admission to the College are more numerous than the fund appropriated to its use will support.

At the time of the filing of the Defendant's answer, the par value of the personal estate was five hundred and nineteen thousand dollars, and the income was eight thousand six hundred dollars. Stocks and loans, to the par value of over three hundred thousand dollars, paid neither dividends or interest, and the greater part were worthless.

The income of the real and personal estate for 1857, when the largest income was received, was one hundred and sixty-four thousand dollars; and the charges for taxes, water rent, repairs, permanent improvements and incidental expenses, near seventy-two thousand dollars.

The net income was $92,559, and there was expended for the College $95,538.

While the College was in progress of building, the Defendants applied the net income of the capital, not appropriated to the building of the College, or to the fund for the improving the Eastern front of the City, to the municipal purposes indicated by the testator; but since the same has been required for the College, they have not been so applied.

At the time of the death of Mr. Girard, the territorial boundaries of the Corporation of the Mayor, Aldermen and Citizens of Philadelphia, were Vine and South streets, and the River Delaware and Schuylkill.

The inhabitants within these limits were taxable, by three or four local municipal authorities.

This circumstance, with others, had impressed the people of the City, and those similarly circumstanced, who resided in neighboring municipalities, with the sense of the convenience and advantage of uniting the whole in one government.

Accordingly in 1854, the citizens of the City and of the other Corporations, memorialized the Legislature of the Commonwealth on the subject. And on the 2d February, 1854, an act was approved, entitled "A further Supplement to an Act, entitled 'An Act to Incorporate the City of Philadelphia.'"

This act enlarged the territorial boundaries of the Corporation of the City of Philadelphia, and changed its corporate name to that of "The City of Philadelphia."

It was provided that the powers of the Corporation of the Mayor, Aldermen and Citizens of Philadelphia, as enlarged and modified by the act, should be exercised and have effect over all the territory for the first time included within its corporate limits, and over all the inhabitants therein; and the Corporation was vested with all the powers, rights, privileges and immunities of the Corporation of the Mayor, Aldermen and Citizens of Philadelphia.

The act also provided that all the estates and incomes, at the time of its passage, held by any of the Corporations united by it, should be held by the City of Philadelphia upon and for the same uses, trusts, limitations, charities and conditions, as they were held at that time.

Since 1854, as has been already stated, the whole of the income of the Trust Property has been applied to meet the requirements of the College; and there has been no surplus revenue to apply to municipal purposes.

And if there were any such surplus, the Defendants can readily apply such for the municipal purposes, as indicated by the testator, as they have shown in their answer and argument.

MADELEINE HENRIETTE GIRARD AND OTHERS,

vs.

THE CITY OF PHILADELPHIA.

Argument for Defendant.

The bill in this case was dismissed in the Circuit Court; and his Honor, Justice Grier, delivered an opinion which, as it appears nowhere else in print, is here inserted.

"The heirs of the late Stephen Girard have again come into Court, claiming a portion of the property devised by him to the City of Philadelphia.

The case of Vidal *vs.* The Executors of Girard, 2 Howard, 17, has put an end to any further controversy as to the validity of the trusts and the power of the City to execute them.

Nor do the heirs, who are complainants in this bill, pretend to call in question the matters finally and conclusively settled by that case. The facts which are supposed to rehabilitate their claim have occurred since its decision. Admitting that the will of Stephen Girard entirely excluded them from any claim of right to the property in question, they now contend that the Consolidation Act has made it impossible for any to execute the trusts for municipal purposes, and, as a consequence, the heirs are entitled to that portion of the estate appropriated by the testator for such uses.

If it shall appear that the effect of the Consolidation Act is not that which the bill alleges, it may be unnecessary to discuss the question whether, if it were, the consequences assumed from it be legitimate. The will of Stephen Girard, after sundry bequests to his relatives and friends, and to certain specified cha-

rities, announces (§XX.) his great and favorite charity to be the establishment of a College for the education of poor orphans. It then proceeds: "Now I give, devise and bequeath, all the residue and remainder of my real and personal estate," &c., unto "The Mayor, Aldermen and Citizens of Philadelphia, in trust, for the several uses, intents, and purposes hereinafter mentioned and declared."

The attempt to restrain the alienation of the realty, being inoperative, cannot affect the validity of this devise. After many and very special directions as to the College, its construction and government, it further directs that two millions of the personal estate be appropriated to the building; and if this sum should not be sufficient, the remainder should be taken "from the final residuary fund hereinafter expressly referred to," and which is found in the XXIVth section, as follows:

"And as it regards the remainder of said residue of *my personal estate*, to invest the same in good securities, and in like manner to invest the interest and income thereof, from time to time, so that the whole shall form a permanent fund, and apply the income of the said fund—

First. To the further improvement and maintenance of the aforesaid College, as directed in the last paragraph of the twenty-first clause of this my will.

Second. To enable the Corporation of the City of Philadelphia to provide more effectually than they now do for the security of the inhabitants of the said City, by a competent police, including a sufficient number of watchmen, really suited to the purpose; and to this end, I recommend a division of the City into watch districts, or four parts, each under a proper head.

Third. To enable the said Corporation to improve the City property, and the general appearance of the City itself, and in effect to diminish the burden of taxation now most oppressive, especially on those who are least able to bear it.

"To all which objects the prosperity of the City, and the health and comfort of its inhabitants, I devote the said fund as aforesaid, and direct the income thereof to be applied yearly, and every year forever, after providing for the college as hereinbefore directed, as my primary object."

The realty had before been devised, subject to the trusts of the will, and considering that portion of the fund as already invested in the best manner (as appears from his forbidding its alienation), the income of the whole is then devoted to these three objects; the College being the "primary object." So long as any portion of this fund shall be found necessary for "its improvement and maintenance," on the plan and to the extent declared in the will, the second and third objects can claim nothing. The bill admits this to be a valid charity, and claims only the residue after that is satisfied. Now, it is admitted (for it has been so decided), that till February, 1854, the Corporation was vested with a complete title to the whole residue of the estate of Stephen Girard, subject to these charitable trusts, and consequently, at that date, his heirs at law had no right, title, or interest whatsoever in the same; but the bill alleges that the Act of the Legislature of that date (commonly called the "Consolidation Act,") which purports to be a Supplement to the original Act incorporating the City, has either dissolved or destroyed the identity of the original Corporation, and it is consequently unable any longer to administer the trust. Now, if this were true, the only consequence would be, not that the charities or trust should fail, but that the Chancellor should substitute another trustee.

It is not insisted that the mere change or abbreviation of the name has destroyed the identity of the Corporation. The bill even admits that a small addition to its territory and jurisdiction might not have that effect; but that the annexation of twenty-nine boroughs and townships has smothered it to death, or rendered it utterly incapable of administering trusts or charities

committed to it when its boundaries were Vine and South streets, and the two rivers. There is nothing to be found in the letter or spirit of this Act, which shows any intention in the Legislature to destroy the original corporation, either by changing its name, enlarging its territory, or increasing the number of its corporators. On the contrary, "all its powers, rights, privileges and immunities, etc., are continued in full vigor and effect." It provides, also, that "all the estates, etc.," held by any of the Corporations united by the Act, shall be held "upon and for the same uses, trusts, limitations, charities and conditions, as the same were then held."

By the Act of 4th of April, 1832, the Corporation was "authorized to exercise all such jurisdiction, to enact all such ordinances, and to do and execute all such acts and things whatsoever, as may be necessary for the full and entire acceptance, execution and prosecution of any and all the devises, bequests, trusts, and provisions contained in said will." It may also "provide, by ordinance or otherwise, for the election and appointment of such officers and agents as they may deem essential to the due execution of the duties and trusts enjoined and created by the will of the late Stephen Girard."

Now, it cannot be pretended that the Legislature had not the power to appoint another trustee if the Act had dissolved the Corporation, or to continue the rights, duties, trusts, etc., in the enlarged corporation. It has done so, and has given the widest powers to the trustee to administer the trusts and charities, according to the intent of the testator, as declared in his will.

The Legislature may alter, modify, or even annul the franchises of a public municipal corporation, although it may not impose burthens on it, without its consent. In this case the Corporation has assented to accept the changes, assume the burthens, and perform the duties imposed upon it; and it is difficult to conceive how they can have forfeited their right to

the charities which the law makes it their duty to administer. The objects of the testator's charity remain the same, while the City, large or small, exists, the trust is an existing and valid one, the trustee is vested by law with the estate, and the fullest power and authority to execute the trust.

Whatever the fears or fancy of the Complainants may be, as to the moral ability of this overgrown Corporation, there is no necessary or natural inability which prohibits it from administering this charity as faithfully as it could before its increase. In fact, it is a matter in which the Complainants have no concern whatever, or any right to intervene. If the trust be not rightly administered, the cestui que trust or the sovereign may require the Courts to compel a proper execution.

In the case of Vidal, (2 How. 19), the Supreme Court say, that "if the trusts were in themselves valid in point of law, it is plain that neither the heirs of the testator, or any other private person, would have any right to inquire into or contest the right of the Corporation to take the property or execute the trust; this would exclusively belong to the State, in its sovereign capacity, and as *parens patriæ*, and its sole discretion."

This is not an assertion that the Legislature, as *parens patriæ*, may interfere by retrospective acts to exercise the *cy pres* power, which has become so odious, from its application in England to what were called superstitious uses. Baxter's case, (Vernon), and other similar ones, cannot be precedents, where there is no established church which treats all dissent as superstition. But it cannot admit of a doubt that, where there is a valid devise to a Corporation, in trust for charitable purposes, unaffected by any question as to its validity because of superstition, the sovereign may interfere to enforce the execution of the trusts, either by changing the administrator, if the Corporation be dissolved, or, if not, by modifying or enlarging its franchises, provided the trust be not perverted, and no wrong done to the beneficiaries. Where the trustee is a Corporation, no modification

of its franchises, or change in its name, while its identity remains, can affect its rights to hold property devised to it for any purpose. Nor can a valid vested estate, in trust, lapse or become forfeited by any misconduct in the trustee, or inability in the Corporation to execute it, if such existed. Charity never fails; and it is the right, as well as the duty, of the sovereign, by its Courts and public officers, as also by legislation (if needed), to have the charities properly administered. Now there is no complaint that the charity, so far as regards the primary and great object of the testator, is not properly administered: and it does not appear that there *now* is, or ever will be, any residue to apply to the secondary objects. If that time should ever arrive, the question, whether the charity shall be so applied as to have the "effect to diminish the burden of taxation" on all the Corporation, or only those within the former boundaries of the City, will have to be decided. The case of Soohan *vs.* The City, (9 Casey), does not decide it. Nor is this Court bound to decide it. The answer shows how it may be done; and the Corporation has ample power conferred on it to execute the trust according to either hypothesis; and if further power were necessary, the Legislature, executing the sovereign power, can certainly grant them. In the meantime the heirs at law of the testator have no concern in the matter, or any right to interfere by a bill *qui timet.* Their anticipations of the future perversion of the charity by the corruption or folly of the enlarged Corporation, and the moral impossibility of its just administration, are not sufficient reasons for the interference of this Court to seize upon the fund, or any part of it, and to deliver it up to the Complainants, who never had, and by the Will of Stephen Girard were not intended to have, any right, title or claim whatsoever to the property.

In fine, the bill must be dismissed, because:

1st. The residue of the estate of Stephen Girard, at the time of his death, was by his will vested in the Corporation on valid legal trusts, which it was fully competent to execute.

2d. By the Supplement to the Act incorporating the City, (commonly called the "Consolidation Act,") the identity of the Corporation is not destroyed; nor can the change in its name, the enlargement of its area, or increase in the number of its corporators, affect its title to property held at the time of such change.

3d. The Corporation, under its amended charter, has every capacity to hold, and every power and authority necessary to execute the trusts of the will.

4th. That the difficulties anticipated by the bill, as to the execution of the secondary trusts, are imaginary. They have not arisen, and most probably never will.

5th. And if they should, it is a matter, whether probable or improbable, with which the Complainants have no concern, and cannot have on any possible contingency."

This opinion contains a perfect statement of the relief prayed for; as well as unanswerable reasons for refusing it.

I.

Mr. Girard devised (§ 20) all the residue and remainder of his real and personal estate to the Mayor, Aldermen and Citizens of Philadelphia, in Trust as to his real estate in Pennsylvania, after paying certain annuities, to apply the nett residue to the same uses and purposes to which he devoted the residue of his personal estate. And as to his personal estate, in Trust, as to two millions, or to so much as might be necessary to erect buildings, and endow a College for the maintenance and education of orphan children; as to five hundred thousand dollars to improve certain streets in the City of Philadelphia.

And as to the remainder of the residue of his personal estate in Trust to invest, &c., and apply the income:

1st. To the further improvement and maintenance of the College.

2. To enable the Corporation of Philadelphia to improve their police.

3. To enable the Corporation to improve the City property and the general appearance of the City, and "in effect to diminish the burden of taxation."

It will be recollected that the nett income of the real estate in Pennsylvania was directed to be devoted to the same purposes as the residue of the personal estate.

The Trust, then, of the whole of the remainder of the residue of the estate, real as well as personal, was:

1. For the improvement and maintenance of the College.

2. To the improvement of the police of the City, and

3. To enable the Corporation to improve their property, and the general appearance of the City, and in effect to diminish the burden of taxation.

The testator adds: "To all which objects, the prosperity of the City, and the health and comfort of its inhabitants, I devote the said fund as aforesaid, and direct the income thereof to be applied yearly and every year forever, *after providing for the College, as hereinbefore directed, as my primary object.*"

The testator has previously directed, (§ 21,) that if the income remaining from the unexpended part of the two millions, after the construction of the College, should be inadequate to the construction of new buildings, or the maintenance and education of the orphans applying for admission, that such further sum as might be necessary for such purposes, should "be taken from the final residuary fund hereinafter expressly referred to for the purpose." The testator adding: "my design and desire being that the benefits of the institution shall be extended to as great a number of orphans as the limits of the said square and buildings thereon can accommodate."

And as if to put on the will his indelible seal that the College was his great purpose, he directed (§xxiv) that if the City Cor-

poration should knowingly and wilfully violate any one of his conditions, then the remainder and accumulations of his estate should go to "the Commonwealth of Pennsylvania, for the purpose of internal navigation, excepting, however, the rents, issues and profits of my real estate in the City and County of Philadelphia, *which shall forever be reserved and applied to maintain the aforesaid College.*"

And to the contingencies mentioned in this section, the remainder and accumulations were to vest in the United States, except the rents of the real estate, which was to be reserved for the College.

The magnitude of the College can best be appreciated in considering the location designed for it by the testator, and the character of its beneficiaries. The former was a piece of ground containing forty-five acres, and the latter as many poor white male orphans as the income of his estate would be adequate to maintain.

It seems hard to conceive an argument for any construction of this will, that denies to College to be the object to which all others are subordinate.

Judge Grier calls all the other trusts the secondary ones; and such has been the practical construction of the will by the trustees, for all of the income has been applied for the purposes of the College, since less than all would not suffice to maintain and educate the orphans who have applied for its benefits.

The validity of the trust for the College has not been disputed by the Plaintiffs in their bill, nor do they deny that the present Defendants are incapable to execute them. But they allege that the Consolidation Act has made it impossible to execute the trusts for municipal purposes.

If the Defendants cannot execute the trusts for municipal purposes, then the whole trust estate must be applied for purposes of the College, even without the express direction to that effect. 4 Coke Rep. 131, part VIII., case of Thetford School.

Sir T. M. devised land of the value of £35 for the maintenance of a preacher, of a master of a school and of certain poor people, and a special distribution was made by the testator himself, by his will, among them. Afterwards, the land increased to a yearly value of £100. Two questions were moved.

(1.) Whether the preacher, school-master and poor, should have only the sum appointed to them by the founder, or that the revenue and profit of the land should be employed to the increase of the stipend of each of them? (2.) If any surplus remained, how should it be employed? Resolved by the two Chief Justices and Walmsley, J., that the revenue and profit of the land should be employed to the increase of the stipend of the preacher, &c., and if any surplus remained, it should be expended for the maintenance of a greater number of the poor, &c., and nothing shall be converted by the devisees to their own use.

Brightley, 396. Magill *vs.* Brown.

Baldwin, J. says, the above case and the Statute of Templars, declared the common law to be, that the appropriation of increased profits and revenues of land, charged with a specific sum to charities, should go to the same objects as there specified, and no part should go to the heir or any other use than the charity.

4 Bro. Ch. Cases, 103. Lord Commissioner Eyre, "Surplus results to the charity; not necessary to look further than the objects. It must be applied to its benefits."

These cases, showing how favorably charitable dispositions are regarded by the Courts, might be multiplied without end. The rule is one, as well of the civil, as the common law.

In Pennsylvania, the decisions are uniform.

Pickering *vs.* Shotwell. 10 Barr. 23, (Penn'a. State Rep.) Where there is a discretion or option given to the Trustee, and he cannot apply the bequest to all the contemplated objects, it

will be sufficient if he can apply it to any of them. And the power to act at discretion need not be expressly given if it can be implied from the nature of the trust.

Whitman *vs.* Lex. 17 S. & R. 93.

It is immaterial whether the person to take be in *esse* or not, or whether the legatee were at the time of the bequest a corporation capable of taking or not, or how uncertain the objects may be, provided there be a discretionary power vested anywhere over the application of the testator's bounty to those objects, or whether their corporate designation has been mistaken.

Beaver *vs.* Filson, 8 Barr 327.

In Pennsylvania it is immaterial, in the case of a will, how vague and uncertain the object may be, provided there is a discretionary power vested somewhere over the application of the testator's bounty to those objects, and the law is the same where the direction of the object is vested by agreement in subscribers to the erection of a church and their representatives, or those to whom they delegated the trust.

McLain *vs.* School Directors, 1 P. J. Smith 196, (51 Penn. State Reports.)

In Pennsylvania, equity, disregarding the uncertainty of the object of the charity, will not suffer it to fail, when it can be made certain through a discretionary power vested in those who are to exercise the application of the grantor's bounty.

City of Philadelphia *vs.* Girard's Heirs. 9 Wright, (45 Penn. State Rep.) 28.

"The meaning of the doctrine of *cy pres*, as received by us, is, that when a definite function or duty is to be performed, and it cannot be done in exact conformity with the scheme of the person or persons who have provided for it, it must be performed with as close approximation to that scheme as reasonably practicable; and so, of course, it must be enforced. It is the doc-

trine of approximation, and it is not at all confined to the administration of charities, but is equally applicable to all devises and contracts wherein the future is provided for, and it is an essential element of equity jurisprudence."

If, therefore, one of the trusts only had been a valid one, and the others illegal or invalid, the above authorities show that the whole trust fund should be applied to the valid one. And if at any subsequent time, one of several trusts become invalid or impossible to be executed, why should not the trust estate be applied to the execution of the valid trusts? The reason is the same in both instances. That being found in the rule of law, which declares that that which had been once devoted to charity or public uses, shall always be applied to such.

Story's Equity, p. 524, § 1177.

"The general rule is, that if lands are given to a corporation for any charitable uses which the donor contemplates to last forever, the heir can never have the land back again. But if it should become impracticable to execute the charity as expressed, another similar charity will be substituted, so long as the corporation exists. If the charity does not fail, but the trustee or corporation fail, the Court of Chancery will substitute itself in their stead, and thus carry on the charity."

Public trusts and charitable trusts may be considered as synonymous expressions.

2 M. & Cr. 622. Attorney *vs.* Heelis.

Amb. 651.

6 Beav. 220. Att'y General *vs.* Corporation of Shrewsbury.

6 Casey, (30 Penn. State Rep.) 450. Cresson's Appeal. A bequest to the City of Philadelphia, to expend the income to plant and renew shade trees in the streets, was held to be a charitable bequest.

Magill *vs.* Brown. Brightley, 350. Held that a bequest for a fire engine and hose was a gift for a charitable use.

II.

The Trust for municipal purposes was to have effect, only if there was a surplus beyond the wants of the College. The whole of the residue was given, 1st, to the maintenance of the College; 2d and 3d, to certain municipal purposes. The first was the primary trust; the others were secondary.

The answer shows that the whole of the net income of the residuary estate since the year 1847, has been appropriated to the maintenance and endowment for the College, and used for that purpose. And further, that the applicants for admission to the College have far exceeded the ability of the City to maintain them.

III.

At the time of the death of Mr. Girard, the City of Philadelphia was bounded by Vine and South streets, and the Delaware and Schuylkill rivers. The legislative power of the Corporation was vested in two bodies, called the Select and Common Councils. The Legislature of the State had, from time to time, enlarged, modified, and curtailed the powers of these bodies. The City of Philadelphia formed a part of the County of Philadelphia. The other parts of the county contained a number of municipal Corporations, all of which were for many purposes independent of each other. There were some Corporations or *quasi* Corporations which exercised authority and jurisdiction over the whole county. The poor, the health, the public education, the business of streets, was managed and regulated by these last-named bodies; and the care of providing for the support of the administration of Justice was devolved upon a separate and independent body.

The evils flowing from such a system of government, was found to be productive of inconveniences, that in the year 1854 the Legislature of the Commonwealth incorporated all of these independent municipalities into the City of Philadelphia.

The act is called by its title "A further Supplement to an Act, entitled an Act to Incorporate the City of Philadelphia."

The 1st section provided that the corporate name should be changed to "The City of Philadelphia," and that the boundaries of the City should be "extended so as to embrace the whole of the territory of the County of Philadelphia."

And the 6th, that upon the first organization (whose election had been previously provided for), "The City of Philadelphia, as established by this act, shall be vested with all the powers, rights, privileges, and immunities incident to a municipal Corporation, and necessary for the proper government of the same, *and those of the present Corporation of the Mayor, Aldermen and Citizens of Philadelphia*," *&c.*

The 37th section enacted "That all the estates and incomes now held in trust by the County, *present City*, and each of the townships, districts, and other municipal Corporations united by this act, *shall be held by the City of Philadelphia upon and for the same uses, trusts, limitations, charities and conditions, as the same are now held by the said Corporations respectively.*"

Surely nothing was further from the intention of the Legislature than an interference with the trusts of Mr. Girard's will.

If the conduct of a trustee can forfeit his *cestui que* trusts estate, it must be shown that the trustee, by forbearing or acting, could save the estate. The Councils of the City, or the people of the City, had neither or both of them, the power to prevent the Legislature from enlarging the boundaries of this public Corporation.

2 Kent, 274—275*. Public Corporations created for political purposes as cities, counties, towns and villages, are invested with subordinate legislative powers, to be exercised for local purposes connected with the public good, and such powers are subject to the control of the Legislature of the State.

2 Kent, 305. In respect to public corporations which exist only for public purposes, as cities, counties, &c., the Legislature, under proper limitations, have a right to change, modify, and

enlarge them. A public Corporation instituted for purposes connected with the administration of government, may be controlled by the Legislature, because such Corporation is not a contract. In such public Corporations, there is really but one party, and the governors of the Corporation are merely trustees for the public.

Angell & Ames on Corporations, 5th ed., p. 27, §31.

The Legislature has exclusive and unrestrained control over municipal Corporations, as guardians of the public interests. They are the auxiliaries of the government in the business of municipal rule, and have no pretence to be considered contracts; their objects are inconsistent with anything of the nature of contract.

North Yarmouth *vs.* Skillings, 45 Maine, 133.

In respect to public Corporations, which exist for public purposes alone, like counties, cities, and towns, the Legislature, under proper limitations, have the right to restrain, modify, enlarge or change them, providing, however, that property owned by such Corporations shall be secured for the use of those having an interest in it.

Brown *vs.* Hummel, 6 Barr, (Pa. State Rep.) 92.

Coulter, J. There can be no doubt the Legislature possesses the power to alter the charter of such public bodies, as concern the welfare and wholesomeness of the body politic; such as concern the administration of government are emphatically public. Such are the Corporations of cities and boroughs, where no private right of property is involved, except incidentally, and such as can be easily reserved and compensated.

Kirby *vs.* Shaw, 7 Harris (13 Penn. State), 258.

An Act of Assembly authorized the Commissioners of Bradford county to add five hundred dollars annually, for a certain number of years, "to the usual county rates and levies of the Borough of Towanda, in said county, for the purpose of defray-

ing the expenses of erecting the Court House and Jail" then in the progress of erection in said Borough. Held that the law was constitutional.

2 P. F. Smith (52 Penn. State), 374.

Municipal Corporations being creatures of the Legislature, have no constitutional guarantee of trial by jury, and such trial may be denied them.

Grant on Corporations (52).

"Where a Corporation has a new name given to it, it remains in all other respects unchanged, the rights and liabilities remain as before, although the territorial limits of the jurisdiction of the body politic may be enlarged or modified."

Sir J. Raymand, 439, Haddock's case.

Same case, 1 Vent. 355.

If a Corporation that hath been by prescription, accept a new charter, wherein some alteration is of their name, and likewise of the method of the governing part, yet their power to remove and other franchises which they had de temps d'out, &c., do continue.

Lutterel's case, 4 Rep., 88.

"If a Corporation have franchise or privileges by grant or prescription, and afterwards they are incorporated by another name, as where they were Bailiffs and Burgesses before, now they are Mayor and Commonalty, or Prior and Convent before and afterwards they are translated into Dean and Chapter; although in these cases the quality and name of their Corporation are altered and changed, and chiefly in the case of Prior and Convent, for from regular, who are dead persons in law, thus are made secular; yet the new body will enjoy all the franchises, privileges, and hereditaments which the old Corporation or body politic had, either by grant or prescription, *for no person will* be prejudiced thereby."

If this trust for municipal purposes has been forfeited by the acts of the trustees, then by the terms of the will it is forfeited for the use of the Commonwealth.

The answer denies that the Defendants sought to promote the enactment of the Consolidation Act, and there was no evidence to prove such fact.

The answer shows how the trust for municipal purposes can be executed by the enlarged and extended City; and that if any fund remain after the necessities of the college are provided for, they can be so applied as to diminish the burden of taxation on property in that portion of the enlarged City, that was the territorial limit of the original City of Philadelphia.

This trust for municipal purposes is not a trust in the sense that all gifts to Municipal Corporations, are in trust to devote them to municipal purposes; but an active one, whereof the Corporation is the trustee, and the inhabitants of the City are the beneficiaries. This is shown conclusively by the circumstance, that the trust only is available if the funds are not needed for the College.

1 Russell 226, 234. Attorney-General *vs.* Vivian.

Lands were devised to the parson and church wardens of the parish of St. Austen, in London, for the use of the parish church. After the fire of London that parish was united with the adjoining parish of St. Faith's, and the church of St. Austen thenceforth became the parish church of the two united parishes. The act by which the two parishes were united, declared that, notwithstanding such union, each of the parishes, as to all rates, taxes, parochial rights, charges and duties, and all other privileges, should remain distinct as theretofore. It was held that the parishioners of St. Faith's had no right, either under the will nor the Act of Parliament, to have any part of the rents applied in ease of that proportion of the expenses of maintaining the church of the united parishes which they were bound to defray.

Finch R., 193. Att'y-Gen. *vs.* Mayor, &c., of Rochester.

Testator gave property for building alms-houses in the City of Rochester, and afterwards the bounds of the City were enlarged by charter. It was held that the poor who inhabited the parts added to the City should participate in the revenue of the charity which had greatly increased; and subsequently (same *vs.* same, 6 Sim. 273, 322) another parish which had been added to the City was decreed to be entitled to a share of the rents.

These cases do not seem to agree with each other, but they show that there was no suspicion that the Trusts failed or were forfeited.

The Act of the Legislature of Pennsylvania, which was the subject of discussion in the case of Kerby *vs.* Shaw, before cited, shows the mode by which a portion of the inhabitants of a County were made to pay an increased amount of taxation beyond the others. The Act declared that $500 annually should be paid by the inhabitants of the borough towards the erection of the county jail; and the mode of levying the increased tax was thus provided: "After the assessment (on the whole county) the Commissioners shall add to the tax of each person assessed in said borough, for county purposes, such proportion of five hundred dollars as the tax of each person shall bear to the aggregate amount of taxes levied upon said borough for county purposes, &c."

Now, if there should be a sum, under the Trusts in this will, applicable for municipal purposes—that is, to diminish the burden of taxation—the above Act points out the mode in which the taxes assessed on property in the original City can be deducted, in proper proportions, from the taxes of each inhabitant, or each property, as the case may be.

IV.

If it be conceded that the Trusts for municipal purposes have failed, or cannot be executed, and that the College is not entitled to the use of these Trust funds, who is entitled to take the Trust property?

If the testator had devised his estate to A. and his heirs, and A. had died without heirs, it could not have been argued, with any show of reason or authority, that the heirs of the testator would be entitled to the devised estate. It would escheat to the Commonwealth; and there is no reason why, in the case of a devise in trust for a charity, which has vested and taken effect, and fails, a different rule should exist.

If these Trusts cannot be executed, the estate goes to the Commonwealth as *parens patriæ.*

In England there is no doubt that this is the rule.

2 Bevan, 313. Attorney-General *vs.* Ironmonger's Co.

Residue of testator's estate was devised to a Company, to apply the interest of a moiety "unto the redemption of British slaves in Turkey or Barbary," and there being no such slaves, the Court directed a master to approve of a new scheme *cy prés.*

Gifts for charities never fail because they are ease of the public burdens.

It was the common law that the King, as *parens patriæ*, had the disposal of all charities, which, for any reason, could not be applied according to the will of the donor.

Where there was a general indefinite purpose, not fixing itself upon any object, the disposition was in the King by sign manual; where the execution was to be by the trustee, with general or some objects pointed out, there the Court took the administration of the trust.—Moggridge *vs.* Thackwell, 7 Vesey, 86.

Magill *vs.* Brown, Brightly, 395.

Baldwin, J. "That branch of the personal or prerogative jurisdiction of the Chancellor, which is exercised on the information of the Attorney-General, by appointing a charitable donation to new objects, on the extinction of those to which it was originally

devoted, will be found to be derived from the fundamental law of charities, established by the Statute of Templars, 17 Edw., 11,"

17 Howard. Fontain *vs.* Ravenal.

Taney, C. J. The power which the Chancellor exercises over donations to charitable uses, so far as it differs from the power he exercises in other cases of trust, does not belong to the Court of Chancery as a Court of Equity, nor is it a part of its judicial power and jurisdiction; it it a branch of the prerogative power of the King, as *parens patriæ*, which he exercises by the Chancellor.

Whether the jurisdiction was a branch of the prerogative, or the law established by the Statute of Templars, it was certainly the common law; but the rule, no matter how derived, whether through the prerogative power or the Statute of Templars, was, that a fund devoted to charity, should always continue so devoted.

This prerogative power, or this common law, was brought to this country by the Colonists.

Darthmouth College *vs.* Woodward, 4 Wheaton, 657.

By the Revolution, the duties and power of government devolved upon the people of the States; among the latter, was the transcendent power of Parliament, as well as that of the Executive Department.

Magill *vs.* Brown. Brightly, 403.

Baldwin, J. The rights and prerogative of the Crown devolved on the several States, by their declaration of Independence, and the assumption of the powers of self government. The general supervision of infants, idiots, lunatics and charities, which thus devolved on them, can be exercised only by the authority of the Legislature.

Fountain *vs.* Ravenel. 17 Howard.

Taney, C. J. These prerogative powers which belong to the sovereign, as *parens patriæ*, remain with the States.

How have these prerogative powers and the authority of the Chancellor been executed in Pennsylvania?

Guardians of the Poor *vs.* Green. 5 Binney, 558. (1813.)

Every country has its common law. Our's is composed partly of the common law of England and partly of our own usages. When our ancestors emigrated from England, they took with them such of the English principles as were convenient for the situation in which they were about to place themselves. It required time and experience to ascertain how much of the English law would be suitable to this country. By degrees, as circumstances demanded, we adopted the English usages, or substituted others better suited to our wants. Per Tilghman, C. J.

Witherow *vs.* Keller. 11 S. & R. 273. (1823.)

The first settlers brought with them the common law in general, except such parts as were unfit for colonies, and from time to time, as occasion required, its principles were recognized and its forms of action employed.

Some writs and remedies known to the common law, were for the first time introduced into practice after Independence—for example, the jury *de medietate linguæ*—assize of nuisance—homine replegiando.

Whitman *vs.* Lex. 17 S. & R. 93. (1827.)

Gibson, C. J. "It is not intended to attempt an outline at this branch" (charities) "of our equitable jurisdiction, or to point out those particulars in which it differs from that which has been assumed in England. *This must be a matter of gradual development, according to the exigencies of the cases that may arise.* It may safely be suggested, that in many particulars the relief which we shall be able to afford thro' the medium of common law forms, will necessarily fall short of that which would be administered by a Chancellor."

In this case it was decided, that it was immaterial whether the person to take be in *esse* or not, or whether the legatee were

at the time of the bequest a corporation capable of taking or not, or how uncertain the object might be, *provided there was a discretionary power vested anywhere over the application of the testator's bounty to these objects.*

In 1824, Judge Tilghman said that the writ of *audita querela* had never issued in Pennsylvania. It was allowed to issue in 1836.

And

McGirr *vs.* Aaron. 1 Pa. Rep. 49. (1829.)

Was a devise to a Roman Catholic priest that should succeed the testator in the Parish Church, in trust, &c.; held the devise was for the maintenance of a priest, but in ease of the congregation and for its benefit: and that the congregation was entitled to take the profits in the first instance, but subject to a right in the priest to have them applied to his support.

At the time of the death of the testator the congregation was not incorporated, but it was held the charity should vest as soon as it had acquired a capacity to take.

The Evangelical Association's Appeal. 11 Casey, 319.

In cases of charitable gifts the substance of the gift is regarded, and when the object designated by the donor is incapable of taking directly, the law assures the gift to a superior party which is capable, if the gift be intended in ease of that party.

Cresson's Appeal, 6 Casey, 450.

A gift for a charity not void, because the objects are vague and uncertain, if there be a trustee clothed with discretionary power over the disbursement.

These cases show how the equitable jurisdiction of the Courts of Pennsylvania has been developed on the subject of charities and charitable gifts.

Finally, the Legislature by an act declaratory of the common law of the State, passed in 1855, provided, that no disposition of property to be made for religious, charitable, literary or scientific use, should fail for want of a trustee, or by reason of

the objects being indefinite, uncertain or ceasing, or depending on the discretion of a last trustee, or being given in perpetuity or in excess of any annual value allowed by law to be held by a corporation; and providing that certain courts should appoint trustees, and by decree "carry into effect the intention of the donor or testator, so far as the same can be ascertained;" and further, "if the objects of the trust be not ascertainable, or have ceased to exist, or such disposition be in excess of the annual value permitted by law, or in perpetuity, such disposition, so far as exceeding the power of the courts to determine the same by the rules of law or equity, shall be taken to have been made subject to be further regulated and disposed of by the Legislature of this Commonwealth, in the manner as nearly in conformity with the intent of the donor or testator, and the rules of law against perpetuities, as practicable or otherwise, to accrue to the public treasury for the public use."

V.

It is an unvarying rule of law, that estates or trusts for charities will be sustained if possible.

The Statutes of Mortmain did not extend to charitable uses. 4 Cruise, 25, §48.

Nor the Statutes of Wills.—1 Eden. 10; 1 W. & Bl., 90. Attorney-General *vs.* Tancred.

The execution of a power by will defectively executed, is good, if the appointment is to charitable uses.—Margaret Pepper's Will, 1 Parsons, 446.

If tenant in tail devises lands entailed to a charity, the fee passes without fine levied or common recovery suffered. Precedents in Chancery, 16; 2 Vern., 453; Gilbert's Cases, 44.

The Supreme Court of Pennsylvania, in Wall *vs.* The Seminary, 8 Wright, 353, denied this to be law, yet the cases cited show the bent of the English authorities in that direction.

JAMES LYND,
EDW. OLMSTED,
W. M. MEREDITH,
Of Counsel for the Defendants.

IN THE

SUPREME COURT OF PENNSYLVANIA.

CITY
vs.
FIELD *et al.*

July Term, 1867.

No. 37.

Opinion of the Court delivered by Read, Justice.

The whole law making power of the State is committed to the Legislature with certain restrictions and limitations imposed on that body by the Constitution. Independent of these limitations, the legislative power is supreme within its proper sphere.

In the exercise of this power the Legislature have dug canals, built bridges and railroads, and paid for them by money raised by loans and taxation. This power is indisputable, and upon its constitutionality depends our large State debt. The Legislature could undoubtedly build this bridge, over a navigable river, at South street, and pay for it by moneys proceeding from loans or taxes, and in doing it they might employ Commissioners to erect it. This must be conceded, and it is but one step further, to impose the cost of erection on the City and County, through which the river passes and empties itself into the Delaware, and across which the bridge is thrown, connecting the east and west banks of the Schuylkill, upon which Philadelphia is built.

It becomes, in fact, a bridge of necessity, connecting two growing portions of the City, and forming a part of a continuous highway from the Delaware to the remotest parts of West Philadelphia. The City has an area of one hundred and thirty square miles, and eight hundred thousand souls, and the question is, cannot the State place the cost of this great public improvement upon a locality and a population directly benefitted by it? This does not appear to admit of argument, for the mere statement of it is sufficient.

But we are not wanting in direct authority upon this point. In Thomas *vs.* Leland, 24 Wendell 65, it is held that an act of the Legislature imposing a tax upon a local district of the State, in reference to a public improvement, such as a canal, is valid and constitutional, notwithstanding that, previous to the passage of such act, a number of individuals of such district had entered into a bond to the State, by which they bound themselves to pay the whole expense of the improvement. In answer to some objections, Mr. Justice Cowen says: "But the argument proves quite too much. It would go to cut off entirely many acknowledged powers of taxation; such as that which raises money to relieve the poor, or establish and keep on foot common schools, to build bridges, or work the highway. It confounds two distinct legislative powers: a simple power of taxation with the power of taking private property for public use. The former acts upon communities, and may be exerted in favor of any object which the Legislature shall deem for the public benefit. A tax to build a lunatic asylum may be mentioned as one instance. If the power to impose such a tax were to be rested on the ground of individual pecuniary benefits to each one who should be called on to contribute, it is quite obvious that it would not be maintained for a moment. Yet who would doubt that such might be imposed on a local community, a county or even a town? I admit that this power of taxation may be abused; but its exercise cannot be judicially restrained so long as it is referrable to the taxing power."

The same doctrine is laid down in Norwich *vs.* County Commissioners of Hampshire, 13 Pickering 60, and Hingham & Quincy Bridge and Turnpike Coporation *vs.* County of Norfolk, 6 Allen 353. "It has been the practice," says C. J. Shaw, "from the earliest times to charge the cost of certain large expensive bridges, in whole or in part, upon counties; and it is impossible to deny the equity of these provisions." "One of the main purposes," says C. J. Bigelow, "of this general grant of power was to rest in the Legislature a superintending and controling authority, under and by virtue of which they might enact all laws, not repugnant to the Constitution, of a police and municipal nature, and necessary to the due regulation of the internal affairs of the Commonwealth. It is obvious that the exercise of such a power is absolutely indispensable in a wisely governed and well ordered community; and among the purposes for which it is to be exerted, none is more essentail than a wise and careful distribution of certain public burdens or duties; of these a leading one is the construction, support and maintenance of roads and *bridges*." Mr. Sedgwick, in his treatise on statutory and constitutional law, says, p. 554, "As a general rule the taxing power has been treated by the judiciary as vested in the absolute discretion of the Legislative bodies. This doctrine has been repeatedly declared both by the State and Federal tribunals. So the Supreme Court of the United States have said that there is no limitation whatever upon the legislative power of the States, as to the amounts or objects of taxation."

The act before us imposes the cost of erecting this bridge upon the county of Philadelphia, and the money is to be raised by a loan created by the Commissioners, and to be deposited with the Treasurer of the City of Philadelphia, to be checked out by the officers of the Commission, and expended on the construction of the bridge. By the fourth section the Councils are to provide for the principal and interest of this debt, which thus will become a part of the City debt. In King & Ross *vs.*

The City of Brooklyn, 42 Barbour, 627, we find a similar statute in New York for widening Fourth avenue, in Brooklyn, by a Board of Commissioners, the difference being that the City, and not the Commissioners, were to issue the bonds.

The object of this act is to build a free bridge over the Schuylkill at the cost of the county. All the present bridges over that river, from the Girard Avenue Bridge to its mouth, are free, and they have been made so wholly or partially at the cost of the county.

There were four principal ferries over the river Schuylkill, one at High or Market street, vested by the colonial act of 1723, in the then corporation of the City; the Upper or Roach's ferry, as it was then called, at Fairmount; the Lower, then Blunston's ferry, since Gray's ferry, and Penrose's ferry, near the mouth of the river. The first three named ferries were succeeded by floating bridges, which opened to admit vessels. Tne bridge at High street was superseded by the Permanent bridge, erected under an act of the 16th of March, 1798, and opened for passengers and transportation on the 1st day of January, 1805, and cost $300,000. The first bridge of a permanent character, near where the floating bridge of Abraham Sheridan was, known by the name of the Upper ferry, was erected under an act of the 28th of March, 1811, and cost $126,000. This bridge, which had only a single arch of wood of 240 feet span, was burned down, and the present wire bridge, built at the expense of the county by Charles Ellet, Civil Engineer, for $50,000, the abutments of the former bridge having been purchased by the district of Spring Garden for $15,000.

Under two Acts of Assembly of the 24th of February and 7th of March, 1837, the Philadelphia, Wilmington and Baltimore Railroad Company purchased the Gray's Ferry Floating Bridge and estate, and erected the present bridge for railroad and other traveling and transportation, with a draw in it. By

an act to authorize the erection of free bridges over the river Schuylkill, at or near Philadelphia, passed the 16th of March, 1839, the Wire Bridge at Fairmount was erected by the County Commissioners, with the consent of the County Board, one-third of the expenses being provided by voluntary subscription, and the Permanent Bridge at Market street was freed by the County Commissioners paying the company $80,000, one-third of which was provided by private subscriptions. The bridge and site were conveyed to the City. This purchase rendered the provisions for a free bridge at Mulberry or Arch street nugatory. By the last section the County Commissioners, with the consent of the County Board, were authorized to, and did, contract with the railroad company for a free passage forever of the Gray's Ferry Bridge for $55,000, by an agreement dated the 10th November, 1847, the company to maintain the structure in good order.

The bridge at Market street was rebuilt by the City to suit the uses of the City Railroad.

Under the act of 27th March, 1852, to authorize the erection of free bridges over the river Schuylkill, the Girard Avenue Bridge was built by the County Commissioners, and purchased by the City at a cost of $93,560.

Under the same act and the 8th section of the Act of 21st April, 1855, and the 3d section of the act of 16th May, 1857, the Chestnut Street Bridge was erected by the City at a cost of $500,477 79, of which sum the Philadelphia City Passenger Railway Company provided $100,000 in their bonds. It was commenced on the 19th September, 1861, and completed July 4, 1866. There will be found an interesting discussion in relation to this bridge, in The Board of Wardens *vs.* The City of Philadelphia, 6 Wright, 209.

The Rope Ferry, near the mouth of the Schuylkill, was superseded by the Penrose Ferry Bridge, erected by the Penrose Ferry Bridge Company, under act of April 9, 1853, and 13th April, 1854, as a toll bridge, and was purchased by the City,

under the ordinance of December 7, 1862, for the sum of $30,000, and was made a free bridge. Since that period it has cost the City in repairs $15,000, and in an entire rebuilding, $66,261 11.

The Peters' Island Bridge was built by the State for the Columbia Railroad, and was purchased and is owned by the Philadelphia and Reading Railroad Company, and one side of it is used as a toll bridge for passengers and carriages and other vehicles.

The Schuylkill Falls Bridge was built by a company as a toll bridge, and was purchased by the City and made a free bridge, under the acts of 5th of April, 1855, and 15th of March, 1859, and the ordinance of March 5th, 1860. The amount paid was $15,000, and it was afterwards rebuilt by the City at a cost of $17,500, in 1861.

All the bridges, therefore, from the Falls to the mouth of the Schuylkill, are free, excepting the Peters' Island and the railroad bridges of the Connecting Railroad and Pennsylvania Railroad, and have been made so at a very heavy expense to the County of Philadelphia, whether called by that name, or its present name of the City of Philadelphia.

By an act to authorize the erection of a free bridge over the river Schuylkill at South street, in the City of Philadelphia, passed May 16th, 1861, the Councils of the City were authorized and required to erect a good and substantial bridge over the river Sckuylkill, at or opposite to South street, at a cost not to exceed two hundred and fifty thousand dollars, provided for by a loan to be raised as therein directed, said bridge to be free, and to be kept in repair, lighted, watched, altered, remodeled or renewed, if necessary, at the proper cost and charges of the City of Philadelphia.

The City having taken no action under this law, a supplement to it was passed the 5th April, 1866, appointing Commissioners to build the bridge, with authority to create a loan not exceeding six

hundred thousand dollars, payable by the City of Philadelphia. After further opposition by Councils, the Legislature, on the 5th of April, 1867, passed a further supplement, making it the duty of the Chief Engineer and Surveyor of the City to direct the building of the bridge, under the supervision and control of the Commissioners. The bridge was to have a sufficient and convenient draw for masted vessels; and to defray this additional expense, the Commissioners are authorized to create an additional loan of two hundred thousand dollars—these loans to be at six per cent., and payable by the City in forty years, and the proceeds paid to the City Treasurer. The Councils are to provide for the payment of the interest, and a sinking fund to extinguish the principal in forty years. The Mayor, the Presidents of Councils, and other gentlemen, are created additional Commissioners.

The Councils contest the constitutionality of these acts, and, under a resolution of these bodies, the City Solicitor has filed this bill to test that question, and has made a very learned and elaborate argument, to show that these laws are violations of the Constitution, and that this Court is bound to enjoin the erection of the bridge as directed by those acts.

"It will not be denied," said Judge Woodward, "that the Legislature may rule over the Schuylkill by whatever agency is most satisfactory. Nor can it be doubted that a subsequently appointed special agent supersedes and displaces a previously appointed general agent, and this without express words declaratory of the intention to substitute. Counsel invoke those principles of strict construction which apply to grants to private corporations, as if the City of Philadelphia were a bridge company claiming a valuable franchise in derogation of the public rights; but it must be manifest that this is not a case for the application of those principles. The City is not a private but a municipal corporation, and is to derive no profits whatever from the bridge, for it is to be a free and not a toll bridge. The City, like the County, Com-

missioners, are a selected agency for carrying out the purpose of the Legislature to bridge the Schuylkill for the benefit of all the people of the Commonwealth." (6 Wright's, 212.)

This is strictly applicable to the present case. The City declined the agency, and a special agent is appointed to do what she has refused to perform. The Legislature, in the legitimate exercise of her power, has imposed the cost of bridging the river, as she has done before, on the County—the present City. "The only interest involved is the public interest, and no other is concerned in their (municipal corporations) creation, continuance, alteration or renewal. The nature and operation of these corporations repudiate the idea of vested rights." "We know of no vested rights of political power in any citizen or body of citizens, except those conferred by the Constitution." (13 Wendell, 337.) The corporation of the City can be changed, altered or repealed by the Legislature, and it would be a singular anomaly if that body could not, by its own officers, erect a bridge over a navigable river, which is certainly not a duty of a City, unless required by the sovereign power of the State, and put the cost on the City.

Our opinion, therefore, is, that those acts are constitutional, and must be obeyed.

The decree is affirmed, and appeal dismissed, at the cost of the appellants.

SUPREME COURT OF PENNSYLVANIA.

JOHN A. BARCLAY, *et al.*,
vs.
THE CITY OF PHILADELPHIA.
} In Equity.

Justice Read, at Nisi Prius, delivered the following opinion in June, 1868, on the motion of the Plaintiffs that the Defendant should supply them with funds out of the Girard Estates to carry on their litigation.

Stephen Girard died in December, 1831, and his will has furnished subjects of controversy for the Courts of this State and of the United States. The after-acquired real estate was the subject of two decisions in 4 Rawle, 323, and 1 Wharton, 490. In 1844, in Vidal *vs.* Girard's Executors, the Supreme Court of the United States held the devise to the City upon the trusts declared in the will was valid, and that the trusts are of an eleemosynary nature, and charitable uses in a judicial sense. In 1863, in The City of Philadelphia *vs.* Girard's Heirs, 9 Wright, 9, the Supreme Court affirmed the validity of the will, and held that the heirs of Stephen Girard are concluded by the decree of the Supreme Court of the United States in Vidal *vs.* Girard, in which the validity of the trusts created by the will was established. In these suits, the heirs of Mr. Girard were the claimants and actors.

In pursuance of two ordinances of Councils, passed in 1847, providing for the organization and management and for the opening of the Girard College for orphans, a Board of Directors of the College was elected by the Select and Common Councils, who proceeded to organize the institution and to open the same, and to elect the Hon. Joel Jones as the President of the College.

By an Act of the 4th of February, 1854, entitled "A further supplement to an Act, entitled 'An Act to incorporate the City of Philadelphia,'" the corporate name was changed to "The City of Philadelphia," and its boundaries were extended so as to embrace the whole of the territory of the County of Philadelphia. In 1859, in Soohan *vs.* The City of Philadelphia, 9 Casey, 9, it was held that a fatherless child was an orphan within the meaning of the will, and that a preference was to be given to orphans born within the original corporate limits of Philadelphia, as laid out by William Penn, and existing at the death of the testator.

In 1866, the Steward of the College was removed by a resolution of the Board of Directors, and in Field *vs.* Directors of Girard College, 4 P. F. Smith, 233, the Supreme Court sustained their action.

After quoting the language of the will, the Court say: "If the persons spoken of in this clause may not be removed at the pleasure of the Trustees, I do not see why every employee, a janitor, a cook, or a chambermaid, has not a permanent tenure, for they are assistants or agents as fully as is a Steward; all are mere ministerical employments, and the tenure of such agents is generally at pleasure."

On the 11th of September, 1867, a bare majority of the whole Board of Directors removed the President of the College, and at the same meeting nominated and elected another gentleman to fill the vacancy occasioned by his removal. No notice of any such intended action had been given to any Director, except to the ten gentlemen who participated in it and carried it through. No charges had been presented against the Presi-

dent; no Committee had been appointed to investigate his conduct; no notice of any kind had been given to that gentleman, who was the chief executive officer of the institution, and invested with very large powers by the rules for the government of the College, that his conduct was in any way disapproved of; but without trial, without hearing, he was condemned and removed, and another appointed in his place, all in one breath, so as to prevent the possibility of his reinstatement, except by the removal of the ten Judges, the Decemvirs of the College.

The President, a man of varied acquirements, belonging to an honorable profession, which he had left to accept this responsible position, is placed upon the same footing with a janitor, a cook or a chambermaid, upon the naked ground that he holds his office during the pleasure of the Directors. It is evident that the action of the majority, both in the removal and in the election, was decided and determined upon before the meeting of the Board, whether in caucus or not, is entirely immaterial.

The natural result of this extraordinary mode of proceeding in changing the head of the College, was the appointment by Councils of a Joint Special Committee of Inquiry, relative to the management of Girard College, and I have read the printed testimony taken by that Committee, a copy of which was furnished me by the plaintiffs. From a careful perusal of it, I am convinced if this investigation had preceded the hasty and impudent action of the Board, Major Smith would not have been removed from the office of President, but would, at this moment, have been the head of the institution.

The action of the Board of Directors and the official investigation by the Committee of Councils, have no doubt caused the filing of the Bill in Equity in the present case, and which I shall now proceed to consider.

The bill is filed by the surviving executor of the will of Stephen Girard, and eight citizens residing within the limits of the old city, and by three orphans expelled from the Girard

College, as plaintiffs against the City of Philadelphia, the members of the Select and Common Councils, and the Directors of the College.

The bill alleges that under the Act of the 2d February, 1854, extending the boundaries of the City of Philadelphia, the Councils have usurped and assumed the management and control of the persons of the orphans, their maintenance and education at the Girard College, and their rights of property under the will of the testators, and all and singular the rights of the fellow-citizens of the said testator, composing the community of the old city, in all respects as if said community had no special rights, interests or duties in the premises, other or greater than all the citizens of the present city.

The foundation, therefore, on which the present bill stands, is that the present city and its Councils, elected by its citizens, cannot act as the trustees of Mr. Girard's will, and that all acts, particularly in regard to the Girard College, its maintenance, and the admission and education of the orphans within its walls, have been simply acts of usurpation, and in direct violation of the will of the testator.

This theory demands that there shall be a sort of inner Select and Common Councils, with a Mayor, within the old corporate limits. Proceeding upon this assumption, the bill charges, since 1854, gross mismanagement and abuse of the trusts under the will, in regard to the admission of orphans born within the limits of the old city, the appointment of instructors, teachers, assistants and other necessary agents, and in the election of Directors through political influence, in the discipline of the institution, and in the want of a proper system of moral training. It also charges that with proper management of the estate, a larger number of orphans could be maintained and educated.

A municipal corporation is a creature of the State, and may be altered, enlarged, limited or abolished, as the Legislature

may deem expedient, and this was known to the testator when he made his will and devised his estate to the corporation in trust for the erection of a great public charity. When, therefore, the corporate limits and powers of his devisee were extended, the trustee was not displaced, but remained, and was expressly recognized as such in the Act of 1854. The same form of government was preserved, both in the legislative and executive branches, and I can perceive no ground for the charge of usurpation, by either the municipal authorities or the directors or agents appointed by them.

I believe the sum of five hundred thousand dollars mentioned in the 22d clause of the will, both as to investment of principal and application of income, has been faithfully appropriated to the designated objects within the limits of the old city, and no complaint has been made of usurpation against the authorities of the enlarged city.

In the same manner the various estates and incomes devoted to charitable purposes, vested in the old city and district and other corporations, have, by the Act of 1854, passed into the hands of the present corporation, known as the City of Philadelphia, and are managed by their authorities for the benefit of the *cestui que* trusts in the same manner as by the original trustee. This is the case with all the wills and trusts now administered by the present city, from the legacy of Benjamin Franklin in 1790, to the then corporation, to the bequest of Thomas D. Grover unto the Commissioners and inhabitants of the District of Southwark, of his real and personal estate for certain charitable purposes, the benefits of which are strictly confined to persons within the then defined boundaries of the District of Southwark. The trusts are all preserved and faithfully executed, according to the expressed wishes of the original founders of the charities, by the City of Philadelphia, representing the civil municipal corporations, now no longer in existence.

The Girard College is a great public charity, extending its

bounty not only to poor white male orphans, born within the limits of the old city, but also to those born within the whole State, and within the cities of New York and New Orleans.

The trustee is a civil municipal corporation, and the trusts are of an eleemosynary nature, but I am not aware that any usurpation of power or any violation of the trusts by the corporation of the city can be made the subject of judicial action on the application of private citizens, however high their standing is in the community of which they are most valuable members. Any other eight citizens have the same right, and none of them can allege they have orphans who are the objects of Mr. Girard's bounty, nor can I perceive any peculiar merit in the three expelled orphans who are named as co-plaintiffs. The surviving executor of Mr. Girard is a most estimable and honorable gentleman, but I do not perceive that the 26th clause of the will vested him and his co-executors, with the power and authority of visitors of this charity, a power never claimed or exercised by them, and which the present bill in fact negatives.

A visitor is, in fact, a judge, and acting as such within his jurisdiction, his decision is final. No such power is alleged to be vested in the present plaintiffs, whilst the Councils, by an ordinance of the 9th of November, 1848, as amended by the ordinance of the 3d of July, 1854, constituted their members a standing committee of visitation of the Girard College for orphans.

I am therefore of opinion that the plaintiffs have not shown such a title, to ask for the relief prayed for them, as should induce this Court to supply them with funds out of the trust estate, to carry on the present litigation. "If the trusts," says Judge Story, "were in themselves valid in point of law, it is plain that neither the heirs of the testator nor any other private persons, could have any right to inquire into or contest the right of the corporation to take the property, or to execute the trusts, but this right would exclusively belong to the State in its sovereign capacity, and in its sole discretion to inquire into

and contest the same by a *quo warranto or other judicial proceeding.*"

These remarks are strictly applicable to all the allegations in this bill, and to the case before the Court, and I am therefore obliged to refuse the application on the part of the plaintiffs.

Conceding that the Directors had the right to remove the President of the College, he holding his office during their pleasure, the mode and manner of doing it, with the reasons assigned for the act, cannot fail to suggest that there should be some radical change in the selection of persons to control the operations of this great and magnificent charity.

There are eighteen Directors, and it is provided by ordinance, "That no member of Council shall be a member of said Board of Directors," and "That no member of the Board of Directors, nor any member of the Select and Common Councils, shall be directly or indirectly concerned in any contract, engagement, or arrangement for furnishing any supplies, whereby any profit or advantage may accrue to him in the management of said College."

Both of these prohibitions should be extended to all the officers and departments of the City Governments, and to all persons employed in any manner or form under the legislative or executive branches of the City Corporation.

The Constitution of 1790, exhibited a strong jealousy of the appointing power in the 18th, now the 19th section of the first article, which re-appears in the 8th section of the 6th article of the amended Constitution of 1838, in this direct language: "No member of the Senate or of the House of Representatives shall be appointed by the Governor to any office during the term for which he shall have been elected."

In the Act of 1854, which is the City Charter, the 48th section provides that no person shall be a member of more than one of the bodies enumerated in it, and in the 4th section is a proviso, "That no member of the State Legislature, nor any

one holding office or employment under the State at the time of said election, shall be eligible as a member of said Councils; nor shall any member of said Councils, during the term for which he shall be elected, hold any office or employment herein created or provided for of a municipal character."

The first clause of this proviso has been extended by the Act of 18th March, 1863, and the second clause clearly excludes any member of Councils from the office of City Treasurer, Receiver of Taxes, City Contoller, City Commissioner, Alderman or Mayor during the term for which he is elected, being a copy from the prohibition in the Constitution.

By adopting the spirit of these enactments, the Directors of the Girard College would be made a body of independent citizens, freed, as far as possible, from political influences. That there should be an infusion of practicle business men among them is evident from the College details, but there certainly should be a large proportion of prominent citizens who take a deep interest in education, and in the management of this noble charity. Is it not possible, out of a population of 800,000 souls, to find eighteen Directors of the College, amply qualified to discharge, to the entire satisfaction of the community, all the duties imposed upon them as the managers of this great institution?

I believe the College has been generally well managed, as the testimony proves, and that one of the errors committed was the endeavor to maintain and educate too many orphans within its walls. Six hundred was clearly too many, and I think five hundred is more than its funds can support, for it is evident that many repairs and improvements have not been made, owing entirely to the want of the necessary means. I take a deep interest in this charity, and have, therefore, perhaps made a more extended examination of the subject than was called for by the question before the Court.

The rule is refused.